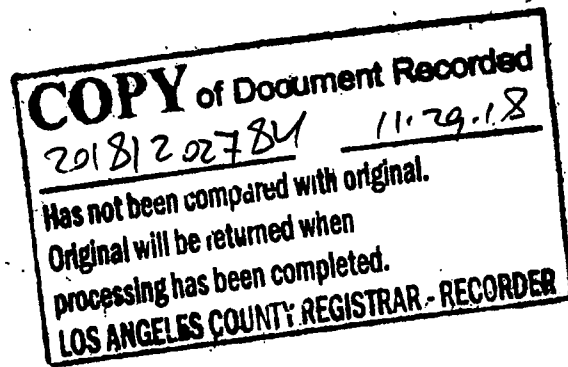


**RECORDING REQUESTED BY:**

FIRST AMERICAN TITLE-HSD

**WHEN RECORDED MAIL TO:  
MAIL TAX STATEMENTS TO:**

NEXT CENTURY PARTNERS, LLC  
1999 Avenue of the Stars, Suite 2850  
Los Angeles, CA 90067  
Attention: Chief Executive Officer



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**DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS AND RESERVATION OF EASEMENTS**

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(Title of Document)

3A

**RECORDING REQUESTED BY:**

5469861

**WHEN RECORDED RETURN TO:**

NEXT CENTURY PARTNERS, LLC  
1999 Avenue of the Stars, Suite 2850  
Los Angeles, CA 90067  
Attention: Chief Executive Officer

Exempt from fee per GC 27388.1 (a)(1); fee cap of \$225 reached

Mail Tax Statements To:  
SAME AS ABOVE

APN: 4319-004-161  
TRA: 00067

The Undersigned declares that  
Documentary Transfer Tax is \$ -0-. The value of the  
property in this conveyance, exclusive of liens and  
encumbrances is \$100.00 or less, and there is no additional  
consideration received by the grantor, R & T 11911.

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION  
OF EASEMENTS  
FOR  
THE CENTURY PLAZA HOTEL RESIDENCES**

**made by**

**NEXT CENTURY PARTNERS, LLC,  
a Delaware limited liability company**

**NOTE: THIS DECLARATION INCORPORATES BY REFERENCE A  
BINDING ARBITRATION PROVISION IN ACCORDANCE WITH THE  
FEDERAL ARBITRATION ACT, A FORM OF ALTERNATIVE DISPUTE  
RESOLUTION WHICH INCLUDES THE WAIVER OF A RIGHT TO A  
TRIAL BY JURY.**

Mail Tax Statements To:  
SAME AS ABOVE

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND  
RESERVATION OF EASEMENTS  
FOR  
THE CENTURY PLAZA HOTEL RESIDENCES**

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR THE CENTURY PLAZA HOTEL RESIDENCES ("**Declaration**") is made as of November 27, 2018 by Next Century Partners, LLC, a Delaware limited liability company ("**Declarant**").

**RECITALS**

A. Declarant is the Owner of that certain real property (the "**Residential Property**") situated in the City of Los Angeles, County of Los Angeles, State of California, more particularly described as follows:

**Parcel A:**

Lots 26 and 27 of Tract No. 71688, as shown on that certain Tract Map recorded on October 30, 2017 in Book 1400 at Pages 60 to 94, inclusive, of Maps in the Official Records (the "**Tract No. 71688**").

**Parcel B:**

The Common Element (defined in Section 1.31 below).

**Parcel C:**

Units 201 through 210, 1201 through 1221, 1401 through 1421 and 1601 through 1611, inclusive, all of which Units are shown on that certain Condominium Plan for Lots 6, 7 and 12 of Tract No. 71688, recorded concurrently herewith in the Official Records (the "**Condominium Plan**").

B. The Residential Property is part of a sixteen (16) story existing building (the "**Hotel Building**") originally constructed in 1966 that formerly housed the Century Plaza Hotel. Declarant is re-developing the Hotel Building into a mixed-use hotel and residential condominium project which contains (i) a hotel located on Lots 3, 8, 14, 50 and 53 of Tract No. 71688 (the "**Hotel Property**") and consisting of a hotel lobby, commercial areas and related facilities located on the first (1<sup>st</sup>) floor of the Hotel Building, three hundred ninety-four (394) hotel rooms located on the third (3<sup>rd</sup>) through eleventh (11<sup>th</sup>) floors of the Hotel Building, a portion of the Hotel Building's roof containing a pool deck and a mechanical room, and certain portions of the Hotel Building below ground level which contain a ballroom and other hotel amenities and facilities (the "**Hotel Project**"), and (ii) sixty-three (63) residential condominium units and related common areas, amenities and facilities located on the Residential Property and consisting of the second (2<sup>nd</sup>) and the twelfth (12<sup>th</sup>) through sixteenth (16<sup>th</sup>) floors of the Hotel Building and a portion of the Hotel Building's roof (the "**Residential Project**"). The Hotel

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Project and the Residential Project are referred to collectively herein as the (the "**Combined Project**").

C. Given the integrated nature of the Combined Project, a *Declaration of Reciprocal Easements for the Century Plaza Hotel and Residences* (as it may be amended from time to time in accordance with the terms thereof, the "**Reciprocal Easement Agreement**") will be recorded in the Official Records to govern the operation and maintenance of certain portions of the Combined Project as more particularly described in the Reciprocal Easement Agreement. The Association (as hereinafter defined) is being formed to manage and govern the Condominiums (as hereinafter defined) and the Residential Project in accordance with this Declaration and the Reciprocal Easement Agreement. The Hotel Owner (as hereinafter defined) and the Association have certain easements within the Residential Property, and the Association and the Owners (as hereinafter defined) of Condominiums have certain easements in the Hotel Property and throughout the remainder of the Combined Project, all as described in the Reciprocal Easement Agreement. Pursuant to the Reciprocal Easement Agreement, the Association will be responsible to pay a portion of the costs incurred by the Hotel Owner in maintaining certain areas and components of the Hotel Building such as the Exterior Facade (as hereinafter defined), the Building Shared Use Areas (as hereinafter defined), the Shared Building Facilities (as hereinafter defined), the Shared Service Elevators (as hereinafter defined) and the Shared Utility Facilities (as hereinafter defined).

D. The Combined Project is located within a larger mixed-use project (the "**Century Plaza Project**") that will consist of two forty-four (44) story condominium towers containing a combined two hundred sixty-eight (268) condominium units, approximately 94,000 square feet of retail areas and an underground Parking Garage (as hereinafter defined) in addition to the Combined Project. Given the integrated nature of the Century Plaza Project, the Master Declaration (as hereinafter defined) has been recorded in the Official Records to govern the operation and maintenance of certain common areas of the Century Plaza Project (including but not limited to, the Parking Garage, certain landscaping areas, the Century Plaza Project's loading dock and certain driveways and walkways in the Century Plaza Project), as more particularly described in the Master Declaration, and a Master Association (as hereinafter defined) has been formed to manage and govern the Century Plaza Project pursuant to the Master Declaration. The Association, and not the individual Residential Owners (as hereinafter defined), is a member of the Master Association. The Hotel Owner is also a member of the Master Association.

E. The Residential Project is a "common interest development" as defined in Section 4100 of the California Civil Code and a "condominium project," as defined in Section 4125 of the California Civil Code. Accordingly, Declarant desires and intends to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all the Condominiums in the Residential Project pursuant to and in accordance with the Davis-Stirling Common Interest Development Act (California Civil Code Sections 4000 *et seq.*)

F. Declarant hereby declares that all of the Residential Property is to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the limitations, restrictions, reservations, rights, easements, conditions and covenants contained in this Declaration, all of which are declared and agreed to be in furtherance of a plan for the protection, subdivision, maintenance, improvement and sale of the Residential Property for the



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purpose of enhancing the value, desirability and attractiveness of the Residential Property. All provisions of this Declaration, including, without limitation, the easements, uses, obligations, covenants, conditions and restrictions hereof, are hereby imposed as equitable servitudes upon the Residential Property. All of the limitations, restrictions, reservations, rights, easements, conditions and covenants herein shall run with and burden the Residential Property and shall be binding on and for the benefit of all of the Residential Property and all Persons (as hereinafter defined) having or acquiring any right, title or interest in the Residential Property or any part thereof, and their successive owners and assigns.

## **ARTICLE I. DEFINITIONS**

Unless the context clearly indicates otherwise, the following terms used in this Declaration, are defined as follows:

- 1.1 **"Acoustic Guidelines"** has the meaning set forth in Section 9.4.
- 1.2 **"Additional Requirements"** has the meaning set forth in Section 9.14.
- 1.3 **"A La Carte Services"** has the meaning given to such term in the Reciprocal Easement Agreement.
- 1.4 **"Alteration Agreement"** has the meaning set forth in Section 9.2.2.
- 1.5 **"Applicable Laws"** means the entitlements for the Residential Project and any law, regulation, rule, order or ordinance of any governmental agencies having jurisdiction over the Residential Project, which are applicable to the Residential Project or any portion thereof, now in effect or as hereafter promulgated.
- 1.6 **"Architectural Committee"** means the Architectural Committee created pursuant to Article IX hereof
- 1.7 **"Architectural Guidelines"** has the meaning set forth in Section 9.3.
- 1.8 **"Articles"** means the Articles of Incorporation of the Association, as they may from time to time be amended, which are or shall be filed in the Office of the Secretary of State for the State of California.
- 1.9 **"Assessment"** or **"Assessments"** means the following:
  - 1.9.1 **"Regular Assessment"** means a charge against a particular Residential Owner and such Residential Owner's Condominium, representing the base Regular Assessment component of the Common Expenses which are to be levied among the Residential Owners and their Condominiums in the Residential Project, in the manner and proportions provided herein. In addition, any Sub-Metered Expenses attributable to a particular Condominium shall be treated as an additional component of the applicable Regular Assessment attributable to such Condominium as provided in Section 6.5.2(a) below. Regular Assessments are further classified in Section 6.5.1 as **"Residential Regular Assessments"** or **"Shared Regular Assessments."**

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1.9.2 **"Emergency Assessment"** means any charge designated as an Emergency Assessment in this Declaration, the Articles, the Bylaws or the Association Rules. Unless otherwise provided herein, Emergency Assessments shall be allocated against the Residential Owners in the same manner, and in the same proportion, as Regular Assessments.

1.9.3 **"Remedial Assessment"** means any charge and/or fine levied by the Board against a Residential Owner who fails to comply with this Declaration, the Articles, the Bylaws or the Association Rules, together with attorneys' fees and other charges payable by such Residential Owner pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.

1.9.4 **"Capital Improvement Assessment"** means a charge which the Board may from time to time levy against all Residential Owners and their Condominiums, representing the cost to the Association for installation or construction of capital Improvements on the Common Area. Such charge shall be levied against each Residential Owner and his or her respective Condominiums based on the Percentage Shares of the applicable Units.

1.9.5 **"Reconstruction Assessment"** means a charge which the Board may from time to time levy against all Residential Owners and their Condominiums, representing the cost to the Association for reconstruction of any Improvements on the Common Area. Such charge shall be levied against each Residential Owner and his or her Condominiums based on the Percentage Shares of the applicable Units.

1.9.6 **"Reimbursement Assessment"** means a charge levied by the Board against a particular Residential Owner and such Residential Owner's Condominium to reimburse the Association for materials or services provided by the Association which benefit individual Condominiums, including reimbursement for the costs incurred in repairing damage to Common Area and facilities, for which the Residential Owner or Residential Owner's guests, tenants, employees, invitees, licensees, or customers were responsible. Reimbursement Assessments shall also be so levied to reimburse the Association for any other charge designated as a Reimbursement Assessment in this Declaration, the Articles, the Bylaws or the Association Rules.

1.9.7 **"Special Assessment"** means a charge levied by the Board to fund any budgetary shortfall or to restore any funds transferred from the Association's applicable reserve funds. Special Assessments shall also be levied by the Board against a Residential Owner and such Residential Owner's Condominium (and allocated in the same manner as Regular Assessments) to reimburse the Association for any other charge designated as a Special Assessment in this Declaration, the Articles, the Bylaws or the Association Rules. Notwithstanding the foregoing, the Board shall not impose Special Assessments without first complying with the provisions of Section 5605 of the California Civil Code. The foregoing limitation shall be subject to exception for Emergency Assessments. Such charge shall be levied among all the Residential Owners and their Condominiums in the same manner, and in the same proportion, as Regular Assessments.

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1.10 “**Assigned Storage Spaces**” means the Residential Storage Spaces set forth in the records of the Association as being assigned to certain Residential Owners, as described in this Declaration.

1.11 “**Association**” means Century Plaza Hotel Residences Owners Association, a California nonprofit mutual benefit corporation, its successors and assigns.

1.12 “**Association Maintenance Funds**” means the accounts created for receipts and disbursements of the Association, pursuant to Article VI hereof.

1.13 “**Association Personnel**” means all persons employed by the Association to provide, without limitation and subject to change, general administrative, maintenance, concierge, valet parking, porter, security, recreational/fitness and/or other services benefiting the Residential Project. Notwithstanding the foregoing, certain Association Personnel may be employed by third party vendors hired by the Association, including the Manager.

1.14 “**Association Purchase Agreement**” has the meaning set forth in Section 7.22.3.

1.15 “**Association Rules**” means the rules and regulations adopted by the Association from time to time and any amendments or supplements thereto.

1.16 “**Balcony Areas**” means the balconies adjacent to a particular Unit identified on the Condominium Plan as the letter B and a unit number to which it is assigned. The Balcony Areas shall be a part of the Exclusive Use Common Area. Certain Units may have more than one Balcony Area. If so, then they will be identified as the letter B, the unit number to which it is assigned and a letter (*e.g.*, B-1401-A, B-1401-B, *etc.*).

1.17 “**Board**” means the board of directors of the Association.

1.18 “**Budget**” means a written, itemized estimate of the income and Common Expenses of the Association in performing its functions under this Declaration.

1.19 “**Building Lot**” or “**Building Lots**” means, individually or collectively, as the context requires, Lots 3, 6, 7, 8, 12, 14, 26, 27, 50 and 53 of Tract No. 71688.

1.20 “**Building Plans**” has the meaning given to such term in the Reciprocal Easement Agreement.

1.21 “**Building Shared Use Areas**” has the meaning given to such term in the Reciprocal Easement Agreement.

1.22 “**Bylaws**” means the bylaws of the Association which are or shall be adopted by the Board, as they may be amended from time to time.

1.23 “**Century Plaza Project**” has the meaning set forth in the Recitals.

1.24 “**Century Plaza Project Rules**” means the rules and regulations adopted by the Master Association from time to time relating to the Century Plaza Project and any amendments

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or supplements thereto, including, without limitation, the "Project Rules and Regulations" (as defined in the Master Declaration) and the "Parking Garage Rules and Regulations" (as defined in the Master Declaration).

1.25 "City" means the City of Los Angeles, California.

1.26 "Claimant" has the meaning set forth in Section 21.9.1.

1.27 "Close of Escrow" means the date on which a deed is recorded conveying a Condominium pursuant to a transaction requiring the issuance of a Public Report by the DRE.

1.28 "Combined Project" has the meaning set forth in the Recitals.

1.29 "Common Area" means the Common Element along with Lots 26 and 27 of Tract No. 71688 which constitute portions of the Residential Property either owned in fee by the Association or owned in common by the Residential Owners. Under all circumstances, the common hallways, lighting fixtures, wiring, electrical panels and automatic control systems, entrances, exits, stairways, Residential Elevators, pedestrian ramps, central identification signs, Residential Project Amenities and similar areas and amenities serving strictly the Condominiums and/or the Owners thereof shall be strictly Common Area. To the extent any portion of the Common Area is a Shared Building Facility, Building Shared Use Area or Shared Utility Facility, such portion of the Common Area shall be governed by the terms of the Reciprocal Easement Agreement, which shall control in all respects.

1.30 "Common Area Maintenance Program" means the program prepared by the Hotel Owner or Hotel Operator on behalf of the Hotel Owner in accordance with the Project Quality Standard and provided to the Association, specifying standards for maintenance of the Common Area and any other areas to be maintained by the Association, as updated and amended from time to time by the Hotel Owner.

1.31 "Common Element" means Lots 6, 7 and 12 of Tract No. 71688 except the Units therein.

1.32 "Common Expenses" means the actual and estimated costs and expenses incurred by the Association for operating, managing, maintaining, repairing and replacing those items described in Section 8.4 and for exercising the powers of and performing the other obligations and duties of the Association under this Declaration, the other Residential Documents and the Master Project Documents, including, without limitation, the following:

1.32.1 The costs of maintenance, management, operation, repair and replacement of the Common Area, and any Improvements located thereon or therein and any other portion of the Residential Project required by this Declaration or the Reciprocal Easement Agreement to be maintained by the Association;

1.32.2 Any costs or expenses levied against the Association and/or all the Residential Owners under the Reciprocal Easement Agreement including, without limitation, the costs of Chilled Water Service (as defined in the Reciprocal Easement Agreement);

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1.32.3 Any costs or expenses levied against the Association under the Master Declaration;

1.32.4 The costs of management and administration of the Association, including, without limitation, reasonable compensation paid by the Association to the Manager, accountants, attorneys, architects and employees;

1.32.5 The costs of maintenance of the Residential Project Amenities;

1.32.6 The costs of operating and maintaining any Residential Utility Facilities, and other services benefiting the Residential Owners and the Condominiums to the extent such services are paid for by the Association;

1.32.7 The costs of all insurance maintained by the Association pursuant to Article XI;

1.32.8 The costs of any inspections required or deemed appropriate under Applicable Laws and the Common Area Maintenance Program or to conform to the Maintenance Obligations;

1.32.9 The costs for any services provided by the Association, or provided to the Association and its Members by the Manager, including, without limitation, concierge, lobby attendant and door attendant services should such services be provided;

1.32.10 Costs incurred in complying with the provisions of any management agreement between the Association and the Manager;

1.32.11 Reasonable reserves as deemed appropriate by the Board or otherwise required pursuant to the Residential Documents;

1.32.12 The costs of bonding of the members of the Board, and any professional managing agent or any other person handling the funds of the Association;

1.32.13 Costs incurred to exercise remedies provided under this Declaration and the other Residential Documents to collect due but unpaid Assessments and Master Association Assessments, including, without limitation, the foreclosure of liens provided under this Declaration (to the extent such costs are not paid or reimbursed by the party that failed to pay its Assessments);

1.32.14 Costs incurred to cover taxes paid by the Association, if any;

1.32.15 Amounts paid by the Association for the discharge of any lien or encumbrance levied against the Residential Property or portions thereof;

1.32.16 Costs incurred by any committees of the Association; and

1.32.17 The costs of any other item or items designated for maintenance by the Association pursuant to this Declaration or the Reciprocal Easement Agreement, or other

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expenses incurred by the Association in connection with the operation and/or maintenance of the Residential Property or in furtherance of the purposes or the discharge of any obligations imposed on the Association by the Residential Documents or the Master Project Documents.

1.33 “**Condition to Reconstruction**” has the meaning set forth in Section 12.1.

1.34 “**Condominium**” means an estate in real property as defined in California Civil Code Section 4125, consisting of the various elements described in Section 2.1.

1.35 “**Condominium Plan**” means the condominium plan recorded in the Official Records, as amended from time to time, for the Residential Property, as described in the Recitals to this Declaration.

1.36 “**Constant Dollars**” means November, 2018 dollars. The inflation factor used to adjust back to Constant Dollars shall be the Consumer Price Index-All Items, Los Angeles-Riverside-Orange County, All Urban Wage Earners and Clerical Workers, 1982-1984 = 100, as published by the Bureau of Labor Statistics, United States Department of Labor (the “**Index**”) or, if the Index is no longer available, or if the method of compiling such Index is changed, a reasonably comparable replacement or successor Index or other mechanism to adjust Constant Dollars shall be designated by the then chief officer of the Los Angeles Regional Office of the Bureau of Labor Statistics, upon the request of either party, as the index which is most comparable to the Index. Further, if the base of the Index is changed, the new base shall be converted to the 1982- 1984 base in accordance with tables issued by said Bureau.

1.37 “**Construction Loan**” means the loan secured by the *Construction Deed of Trust, Security Agreement, Assignment of Leases and Fixture Filing* recorded in the Official Records on July 6, 2016 as Instrument No. 20160784439, as amended by that certain *First Amendment to Construction Deed of Trust, Security Agreement, Assignment of Leases and Fixture Filing* recorded in the Official Records on July 5, 2018 as Instrument No. 20180667746.

1.38 “**Construction Loan Documents**” means “Loan Documents” as defined in that certain *Amended and Restated Construction Loan and Security Agreement*, dated as of July 2, 2018, by and between Declarant and JPMorgan Chase Bank, National Association, as administrative agent (“**Administrative Agent**”) thereunder, as the same may be amended or otherwise modified.

1.39 “**County**” means the County of Los Angeles, California.

1.40 “**Declarant**” means Next Century Partners, LLC, a Delaware limited liability company, and its successors, and any Person to which it shall have assigned or delegated any of its rights or duties hereunder by an express written assignment (it being acknowledged that Declarant has collaterally assigned its rights and duties hereunder to Administrative Agent pursuant to the Construction Loan Documents). Any such assignment may be to all or any portion of the Residential Project, may include only certain specific rights and/or duties of Declarant, and may be subject to such conditions as Declarant may impose in its sole and absolute discretion.

1.41 “**Declarant’s Agents**” has the meaning set forth in Section 21.9.1.

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1.42 “**Declaration**” means this instrument, as it may from time to time be amended or supplemented.

1.43 “**Delinquency Notice**” has the meaning set forth in Section 15.7.4.

1.44 “**Dispute Resolution Procedures**” means the procedures set forth in Section 16.21 of the Master Declaration for resolution of certain claims and disputes.

1.45 “**DRE**” means the California Department of Real Estate or any successor agency that is responsible for administering the sale of subdivided lands pursuant to Sections 11000, *et seq.*, of the California Business and Professions Code.

1.46 “**Emergency**” means any situation, condition or event which threatens substantial imminent danger or injury to person or property.

1.47 “**Emergency Situation**” has the meaning set forth in Section 6.4.4.

1.48 “**Exclusive Use Common Area**” means those portions of the Common Area designated herein or on the Condominium Plan which are reserved for the exclusive use of one or more, but fewer than all, of the Owners of Condominiums, in accordance with Section 4145 of the California Civil Code. Exclusive Use Common Area shall include, without limitation, the Balcony Areas.

1.49 “**Exercise Notice**” has the meaning set forth in Section 7.22.2.

1.50 “**Exterior Facade**” means the exterior wall of the Hotel Building.

1.51 “**Family**” means one or more natural persons related to each other by blood, marriage or adoption, or one or more natural persons not all so related, but who maintain a common household.

1.52 “**Federal Agencies**” means and refers to collectively one or more of the following agencies and the following letter designation of such agencies means and refers to respectively the agency specified within the parentheses following such letter designation: “**VA**” (United States Department of Veterans Affairs), “**FHLMC**” (Federal Home Loan Mortgage Corporation), “**FNMA**” (Federal National Mortgage Association), and “**GNMA**” (Government National Mortgage Association).

1.53 “**Final Sale Date**” means the date on which Declarant closes escrow on the sale of the last of the Units in the Residential Project to a Residential Purchaser.

1.54 “**Fire Life Safety Systems**” means all fire life safety equipment and facilities located within or serving the Hotel Building, as designated from time to time by the City Fire Department or the City’s Department of Building and Safety, including any fire and life safety equipment and facilities solely serving the Residential Project.

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1.55 “**First Mortgage**” means a Mortgage that has priority under the recording statutes of the State of California over all other Mortgages encumbering a specific Unit in the Residential Project.

1.56 “**First Mortgagee**” means the holder of a First Mortgage.

1.57 “**Fiscal Year**” means the fiscal accounting and reporting period of the Association selected by the Board.

1.58 “**Hotel**” means any hotel operated within the Hotel Property.

1.59 “**Hotel Building**” has the meaning set forth in the Recitals.

1.60 “**Hotel Operator**” means the entity engaged by Hotel Owner to operate and manage the Hotel Property.

1.61 “**Hotel Owner**” means the record Owner of the Hotel Property.

1.62 “**Hotel Owner Rules**” means any rules and regulations adopted by the Hotel Owner (or the Hotel Operator on behalf of the Hotel Owner) from time to time relating to the Building Shared Use Areas and/or the Shared Building Facilities pursuant to the Reciprocal Easement Agreement and any amendments or supplements thereto.

1.63 “**Hotel Project**” has the meaning set forth in the Recitals.

1.64 “**Hotel Property**” has the meaning set forth in the Recitals.

1.65 “**Improvements**” means all structures and appurtenances thereto of every type and kind, including but not limited to, building structures, parking structures, parking areas, walkways, sprinkler pipes, carports, recreational facilities, swimming pools, driveways, fences, screening walls, block walls, retaining walls, awnings, stairs, elevators, decks, landscaping, antennae, hedges, windbreaks, the exterior surfaces of any visible structure and the paint on such surfaces.

1.66 “**Increase Election**” has the meaning set forth in Section 6.4.1.

1.67 “**Initial Budgets**” means, collectively, (i) that certain “*Century Plaza (Hotel Residential Condos) Budget*” for the Residential Project dated June 4, 2018 and (ii) that certain “*Century Plaza (Shared Expenses) Budget*” dated June 4, 2018, which have been reviewed by the DRE and shall serve as the initial Budgets for the Association.

1.68 “**Initial Purchase Agreement**” has the meaning set forth in Section 21.8.

1.69 “**Initial Sale Date**” means the first day of the first calendar month following the first Close of Escrow for the sale of a Condominium within the Residential Project.

1.70 “**Institutional Mortgagee**” means a First Mortgagee which is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or



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state laws, any corporation or insurance company, any pension fund or trust, group trust, real estate investment trust or savings fund society, any federal or state agency, or any other institution regulated by federal or state law. Without limiting the foregoing, any successors and assigns of JPMorgan Chase Bank, National Association, as lender under the Construction Loan, shall be Institutional Mortgagees hereunder.

1.71 **"Leasing Fee"** has the meaning set forth in Section 13.1.6.

1.72 **"Lessee"** means any tenant or lessees occupying a portion of the Residential Property with a written lease agreement permitted under this Declaration and the Reciprocal Easement Agreement.

1.73 **"Maintenance Obligations"** means the Association's obligations to perform (i) all maintenance obligations imposed under the Reciprocal Easement Agreement and this Declaration consistent with the terms of the Common Area Maintenance Program and/or to conform to the Project Quality Standard; (ii) all maintenance obligations imposed under any maintenance guidelines and standards set forth in materials provided by Declarant to the Association; and (iii) any other commonly accepted maintenance practices for this type of residential project intended to prolong the life of the materials and construction of the portions of the Common Area required to be maintained by the Association and any other areas required to be maintained by the Association.

1.74 **"Management Party"** has the meaning set forth in Section 4.5.1.

1.75 **"Manager"** has the meaning set forth in Section 4.2.3.

1.76 **"Manufactured Products"** has the meaning set forth in Section 21.9.7.

1.77 **"Master Architectural Guidelines"** means the architectural guidelines adopted by the Master Association, as the same may be amended from time to time.

1.78 **"Master Articles"** means the Articles of Incorporation of the Master Association, as the same may be amended from time to time.

1.79 **"Master Association"** means Century Plaza Master Association, a California nonprofit mutual benefit corporation.

1.80 **"Master Association Assessments"** means the Regular Assessments, Special Assessments, Emergency Assessments, Remedial Assessments, Reconstruction Assessments, Capital Improvement Assessments, Reimbursement Assessments and Cost Center Assessments (each as defined in the Master Declaration) levied pursuant to the Master Declaration or as the context requires, any one or some of such assessments.

1.81 **"Master Board"** means the board of directors of the Master Association.

1.82 **"Master Board Member"** has the meaning set forth in Section 4.3.5(b).

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1.83 “**Master Bylaws**” means the Bylaws of the Master Association, which are or shall be adopted by the Master Board as the same may be amended or supplemented from time to time.

1.84 “**Master Declaration**” means the *Master Declaration of Covenants, Conditions and Restrictions, Reservation of Easements and Operating Agreement for Century Plaza*, recorded in the Official Records, as the same may be amended or supplemented from time to time.

1.85 “**Master Project Documents**” means, collectively, the Master Declaration, Master Bylaws, Master Articles, Century Plaza Project Rules, Project Approvals and Master Architectural Guidelines.

1.86 “**Member**” means every person or entity who holds a membership in the Association.

1.87 “**Mortgage**” means a mortgage or deed of trust or other conveyance recorded in the Official Records encumbering a Unit in the Residential Project to secure the performance of an obligation, which conveyance will be reconveyed upon the completion of such performance.

1.88 “**Mortgagee**” means a mortgagee or beneficiary under a Mortgage.

1.89 “**Non-Declarant Directors**” has the meaning set forth in Section 4.2.13.

1.90 “**Notice and Hearing**” means the applicable procedures that give a Residential Owner notice of an alleged violation of the Residential Documents and the opportunity for a hearing before the Board as set forth in the Bylaws.

1.91 “**Notice of Lien**” has the meaning set forth in Section 6.11.

1.92 “**Notice of Release**” has the meaning set forth in Section 6.11.

1.93 “**Notice of Repair Issue**” has the meaning set forth in Section 21.9.2.

1.94 “**Occupancy Plan**” has the meaning given to such term in the Reciprocal Easement Agreement.

1.95 “**Occupant**” means each Residential Owner, Lessee, designated executive officer of a Residential Owner that is not a natural person and any other Person entitled by a lease or Occupancy Plan to use and occupy any portion of a Condominium.

1.96 “**Offer Agreement**” has the meaning set forth in Section 7.22.1.

1.97 “**Official Act**” has the meaning set forth in Section 4.5.1.

1.98 “**Official Records**” means the Official Records of Los Angeles County, California.

1.99 “**Operating Fund**” has the meaning set forth in Section 6.2.

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1.100 “**Operating Rules**” means those rules of the Association that constitute an operating rule under Civil Code Section 4340 *et seq.*

1.101 “**Owner**” means the record owner, whether one or more persons or entities, of fee simple title to any Building Lot or Condominium which is a part of the Residential Project, but excluding those persons or entities having an interest merely as security for the performance of an obligation.

1.102 “**Ownership Period**” has the meaning set forth in Section 7.24.

1.103 “**Parking Garage**” means the subsurface parking garage located within the Century Plaza Project maintained by the Master Association pursuant to the Master Declaration.

1.104 “**Percentage Share**” means, with respect to each Unit, the percentage set forth on Exhibit A which is computed by dividing the Square Footage of such Unit as set forth in the Initial Budgets by the total Square Footage of all of the Units as set forth in the Initial Budgets. Except as otherwise set forth herein, the Percentage Shares shall not be modified from the Percentage Shares set forth on Exhibit A.

1.105 “**Permittees**” means all Occupants and any Person whose presence within the Residential Project is approved by or is at the request of a particular Residential Owner or Occupant or the Association, subject to the terms of this Declaration and the Reciprocal Easement Agreement, including, without limitation, the respective employees, agents, contractors, vendors, customers, Family, guests, invitees, licensees and concessionaires of a Residential Owner, an Occupant or the Association.

1.106 “**Person**” means a natural individual or any legal entity recognized under California law. When the word person is not capitalized, the word refers only to natural persons.

1.107 “**Power of Attorney**” has the meaning set forth in Section 10.2.5.

1.108 “**Project Approvals**” has the meaning given to such term in the Master Declaration.

1.109 “**Project Quality Standard**” means, at any time, the higher of the following standards: (a) the standard required to operate, maintain, repair and restore the Combined Project in a condition and a quality level no less than that which existed at the time that the Combined Project was initially completed (ordinary wear and tear excepted); and (b) the physical and operational standards applicable to all or substantially all properties managed by the Hotel Operator which are comparable to the Hotel in size, location and operation.

1.110 “**Public Report**” means the final subdivision public report issued by the DRE for the Condominiums within the Residential Project.

1.111 “**Purchaser**” has the meaning set forth in Section 6.1.

1.112 “**Reciprocal Easement Agreement**” has the meaning set forth in the Recitals.

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- 1.113 “**Regular Fixed Costs**” has the meaning set forth in Section 6.5.2(a).
- 1.114 “**Regular Variable Costs**” has the meaning set forth in Section 6.5.2(a).
- 1.115 “**Rent**” has the meaning set forth in Section 13.1.7.
- 1.116 “**Repair Issue**” has the meaning set forth in Section 21.9.1.
- 1.117 “**Reserve Fund**” has the meaning set forth in Section 6.2.
- 1.118 “**Residential Documents**” means, collectively, this Declaration, the Articles, the Bylaws, the Association Rules, the Reciprocal Easement Agreement, the Hotel Owner Rules, the Architectural Guidelines, if any, and the Residential Management Agreement, if any.
- 1.119 “**Residential Elevators**” means the elevators, elevator shafts and related facilities and lobby areas servicing solely the Residential Project and located on Lots 26 and 27 of Tract No. 71688.
- 1.120 “**Residential Management Agreement**” means any agreement or agreements entered into between the Association (or Declarant prior to the formation of the Association) and the Manager concerning the management of the Residential Project by the Manager.
- 1.121 “**Residential Owner**” means the Owner of a Condominium.
- 1.122 “**Residential Owner Maintenance Manual**” means the manual which may be prepared by Declarant or its consultants and provided to each Residential Owner, specifying obligations for maintenance of the Units by the Residential Owners, as the same may be updated and amended from time to time.
- 1.123 “**Residential Project**” has the meaning set forth in the Recitals.
- 1.124 “**Residential Property**” has the meaning set forth in the Recitals.
- 1.125 “**Residential Project Amenities**” means those portions of the Common Area that are intended for the private use of the Residential Owners, including, without limitation, the Residential Roof Deck, the gym, the library and the media, conference and wine room located on the second (2<sup>nd</sup>) floor of the Hotel Building.
- 1.126 “**Residential Purchaser**” shall mean a member of the home buying public who purchases a Condominium from Declarant. A purchaser of five (5) or more Condominiums from Declarant is not a Residential Purchaser.
- 1.127 “**Residential Roof Deck**” means the roof deck located on Lot 12 of Tract No. 71688.
- 1.128 “**Residential Storage Areas**” means the area where Residential Storage Spaces are located, as depicted in Exhibit “D” to the Reciprocal Easement Agreement.

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1.129 “**Residential Storage Spaces**” means the lockers or areas within the Residential Storage Areas, which may be assigned by Declarant and/or the Association to a Residential Owner for such Residential Owner’s exclusive use pursuant to the terms of this Declaration and the Reciprocal Easement Agreement.

1.130 “**Residential Utility Facilities**” means the Utility Facilities servicing solely the Residential Project.

1.131 “**Residential Work**” has the meaning set forth in Section 9.12.1.

1.132 “**Restrictions**” shall mean this Declaration, the Master Project Documents, the Reciprocal Easement Agreement, the Articles, the Bylaws, the Architectural Guidelines, the Common Area Maintenance Program, the Project Approvals, the Hotel Owner Rules and the Association Rules from time to time in effect and as any of the same may be amended or updated from time to time.

1.133 “**Shared Building Facilities**” has the meaning given to such term in the Reciprocal Easement Agreement.

1.134 “**Shared Pool Deck**” has the meaning given to such term in the Reciprocal Easement Agreement.

1.135 “**Shared Service Elevators**” has the meaning given to such term in the Reciprocal Easement Agreement.

1.136 “**Shared Utility Facilities**” means all Utility Facilities which service both the Hotel Project and the Residential Project, which are to be operated, maintained, repaired and replaced by the Hotel Owner (or the Hotel Operator on behalf of the Hotel Owner) as provided in the Reciprocal Easement Agreement.

1.137 “**Shared Fixed Costs**” has the meaning set forth in Section 6.5.2(b).

1.138 “**Shared Variable Costs**” has the meaning set forth in Section 6.5.2(b).

1.139 “**Square Footage**” means, (a) for Units, the number of gross square feet comprising the Unit as calculated by the original Residential Project architect using the methodology described in Section 17.15; and (b) for Common Area, the gross square footage of the area comprising the Common Area. The Square Footage of each Unit shall be the Square Footage attributed to such Unit in the Budget, shall be used for the purpose of calculating the allocation of Assessments and such other calculations among Units as provided herein and shall be calculated on a consistent basis. The Square Footage of Units shall not include Exclusive Use Common Area attributable to such Unit. Notwithstanding the foregoing, in the event two (2) or more Units are combined pursuant to Section 7.21, any hallways or other Common Areas which are deemed to be Exclusive Use Common Area pursuant thereto shall be included in the Square Footage of the combined Units as set forth in the Budget and used for the purpose of calculating the allocation of Assessments and such other calculations among Units as provided herein. Notwithstanding anything contained herein to the contrary, Square Footage shall not be determinative of the boundaries of the Unit itself.

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1.140 **"Sub-Metered Expenses"** means the charges and expenses for electricity which are separately metered for each Condominium. The Sub-Metered Expenses may also include any proportionate charges relating to the operation of the equipment used to deliver and meter the electricity. The Sub-Metered Expenses for a particular Condominium shall be billed to each applicable Residential Owner and treated as an additional component of the Regular Assessment for such Residential Owner's Condominium as provided in Section 6.5.2 below.

1.141 **"Subject Owner"** has the meaning set forth in Section 7.21.

1.142 **"Subject Units"** has the meaning set forth in Section 7.21.

1.143 **"Transition Date"** has the meaning set forth in Section 9.1.2.

1.144 **"Unit"** means each of the sixty-three (63) residential units shown, numbered and designated in the Condominium Plan. Each Unit is a "separate interest in space" as defined in Sections 4125 and 4185 of the California Civil Code and shall be a separate freehold estate, as described in Section 2.1.1 hereof. In interpreting deeds, declarations and plans, the existing physical boundaries of the Unit or a Unit constructed or reconstructed in substantial accordance with the Condominium Plan and the original plans thereof, if such plans are available, shall be conclusively presumed to be its boundaries, rather than the description expressed in the deed, Condominium Plan or Declaration, regardless of settling or lateral movement of any Improvements and regardless of minor variances between boundaries, as shown on the Condominium Plan or defined in the deed and Declaration, and the boundaries of any Improvement as constructed or reconstructed.

1.145 **"Unit Decorating Agreement"** has the meaning set forth in Section 9.2.1.

1.146 **"Utility Facilities"** means all utility, communication, heating and ventilation and other similar facilities including, without limitation, intake and exhaust systems, any back flow preventers, any drainage systems, ducting systems for ventilation and utility services, water systems, sanitary sewer systems, natural gas systems, electrical systems, Fire Life Safety Systems, chilled water systems and central plants, exhaust fans, lightning rods, vaults and switchgears, heating, ventilation and air conditioning systems (including, without limitation, all machinery controls and vents relating thereto), emergency generators, central utility services and all other utility systems, conduits, cabling and facilities servicing the Combined Project or which are situated in, on, over and under the Combined Project.

1.147 **"Voting Power"** means the voting power of the Association set forth in Section 5.2.

1.148 **"Warranty"** has the meaning set forth in Section 21.8.

## **ARTICLE II.** **OWNERSHIP**

2.1 **Ownership Elements.** Each Condominium shall contain the following separate elements:

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2.1.1 *Units.* A fee simple interest in the applicable Unit as identified on the Condominium Plan. Each Unit shall be separately shown, numbered and designated on the Condominium Plan and shall be a separate element which, except as otherwise shown on the Condominium Plan, shall consist of all space and Improvements bounded by and contained within the boundaries described in the Condominium Plan. Each of said Units includes both the portions of the Residential Property so described and the airspace so encompassed, excepting therefrom, (i) bearing walls, structural columns, false columns, vertical supports, concrete subfloors, roofs, foundations, beams, balcony railings, Exterior Facade and windows; and (ii) any Utility Facilities which serve more than one Unit, excluding from this exception, however, outlets thereof within the Units.

2.1.2 *Interest in Common Element.* A separate element consisting of the Common Element to be owned by the Residential Owners as tenants in common, each as to an equal undivided 1/63<sup>rd</sup> interest therein.

2.1.3 *Exclusive Use Common Area.* An easement appurtenant to each applicable Unit for ingress, egress and exclusive use of the Exclusive Use Common Area assigned to such Unit pursuant to the grant deed by which a Residential Owner acquires such Unit.

2.1.4 *Right of Use.* A right of use, appurtenant to each Unit, for ingress to, egress from, and use and enjoyment of the Common Area (except another Residential Owner's Exclusive Use Common Area), subject to the terms of the Residential Documents and the Master Project Documents.

2.1.5 *Membership in the Association.* Each Residential Owner shall be a Member of the Association.

2.1.6 *Nonseverability of Separate Elements.* No Owner shall be entitled to sever such Owner's Unit, or any portion thereof, from the separate elements described in this Section 2.1. Such separate element shall be deemed to be conveyed or encumbered with such Owner's Unit even though the description in the instrument of conveyance or encumbrance may refer only to title to the Unit.

2.2 **Delegation of Use.** Any Residential Owner entitled to the right and easement of use and enjoyment of the Common Area may delegate such Residential Owner's rights provided in this Declaration to use and enjoyment of the Common Area to its Occupants who reside in such Residential Owner's Condominium, subject to the Residential Documents, the Master Project Documents, the Hotel Owner Rules and other reasonable restriction by the Board. A Residential Owner who has made such a delegation of rights shall not be entitled to the use or enjoyment of the Common Area for so long as such delegation remains in effect, other than such access rights as are directly related to the Residential Owner's rights and duties as landlord.

2.3 **Waiver of Use.** No Residential Owner may exempt himself or herself from personal liability for Assessments duly levied by the Association, or effect the release of his or her Condominium from the liens and charges thereof, by waiving use and enjoyment of the Common Area or by abandoning his or her Condominium.

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2.4 **Partition.** Except as provided in this Declaration, there shall be no judicial partition of the Common Area, or any part thereof, for the term of the Residential Project, nor shall Declarant, any Residential Owner or any other Person acquiring any interest in any Condominium in the Residential Project seek any such judicial partition.

**ARTICLE III.**  
**EASEMENTS AND USE RIGHTS**

3.1 **Easements.** Pursuant to the terms of the Master Declaration and the Reciprocal Easement Agreement, the Association and the Residential Owners shall have the easements described in the Master Declaration and the Reciprocal Easement Agreement, as applicable. The Residential Owners and the Association shall also have the easements described in this Article III. Each of the easements reserved or granted in this Declaration shall be deemed to be established on the conveyance of a Condominium to a Residential Owner under authority of a Public Report, and shall thereafter be deemed to be covenants running with the land for the use and benefit of the Residential Owners, the Condominiums, the Association and the Common Area. Individual grant deeds to Condominiums may, but shall not be required to, set forth the easements specified in this Article.

3.1.1 *Limitations.* All of the easements and licenses described in this Article III are subject to the limitations set forth in Section 3.4.

3.1.2 *Association Easement.* The Association shall have an easement over the Common Area for performing its duties and exercising its powers described in the Residential Documents and the Master Project Documents, and for performing repairs and maintenance not performed by the Residential Owners pursuant to the terms of this Declaration.

3.1.3 *Easements for Common Area.* Every Residential Owner shall have, for himself or herself and such Residential Owner's Permittees, a non-exclusive easement of access, ingress, egress, use and enjoyment of, in, to and over the Common Area and any other areas of the Residential Project necessary to exercise any rights of access granted to the Residential Owners under the Residential Documents and Master Project Documents; *provided that*, except in the event of an Emergency, the hallways and corridors on each floor of the Hotel Building providing access to a Unit are restricted to access only by the Association and its agents, employees, vendors and contractors and by the Residential Owners whose Condominiums are located on the applicable floor and such Residential Owners' Permittees; *provided, further, that* the foregoing restrictions shall not limit access to Residential Project Amenities located on the second (2<sup>nd</sup>) floor of the Hotel Building. Notwithstanding the foregoing, no staff member and/or domestic employee of a Residential Owner may use the Residential Project Amenities without being accompanied by a Residential Owner or a member of such Residential Owner's Family.

3.1.4 *Easements for Exclusive Use Common Area.* Declarant expressly reserves for the benefit of certain Residential Owners exclusive easements over the Residential Property for use of the Exclusive Use Common Area assigned to such Residential Owner's Unit pursuant to the grant deed by which a Residential Owner acquires such Residential Owner's Unit.



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3.1.5 *Rights and Duties; Utilities, Ducts, Plumbing and Television.* Wherever sanitary sewer lines and connections, water lines and connections, electricity, gas, telephone, HVAC, security, life safety, communication, data and television lines or facilities, drainage facilities, or duct facilities are installed within the Residential Project, the Owners of Units which are served by said connections, lines or facilities shall have the right, and there are hereby reserved to Declarant and all other Residential Owners, together with the right to grant and transfer same, easements and rights to the full extent necessary for the full use and enjoyment of such portion of such connections, lines or facilities which service such Units, and to enter Units owned by others, or to have utility companies enter Units owned by others, in or upon which said connections, lines or facilities, or any portions thereof, lie, to repair, replace and generally maintain said connections, lines or facilities as and when the same may be necessary; *provided*, that such requests for entry are made in advance and entry is made at a time reasonably convenient to the Residential Owner whose Unit is to be entered and *provided, further*, that the entered Unit is left in substantially the same condition as existed immediately preceding such entry. Such entering Residential Owner or utility company shall repair all damage to any Units caused by such entry as promptly as possible after completion of work thereon. In case of an Emergency, such right of entry shall be immediate.

3.1.6 *Easements to Declarant.* Declarant has reserved all of the easements set forth in the Master Declaration and in the Reciprocal Easement Agreement. In addition, Declarant shall have and hereby expressly reserves the easements necessary for Declarant and its agents, employees and independent contractors to exercise Declarant's rights set forth in Article X and the following easements:

(a) *Utilities.* There are hereby reserved to Declarant, together with the right to grant and transfer same, easements and rights over the Residential Project for the installation, maintenance, and repair of electric, telephone, data, communication, life safety, security, television, water, gas, sanitary sewer, drainage, duct facilities and other utility lines and facilities as are needed to service the Residential Project; *provided, however*, such easements and rights shall not unreasonably interfere with the use and enjoyment by the Residential Owners of their Condominiums or the Common Area. All initial construction by Declarant (and the servicing thereof) shall not be an unreasonable interference with the use and enjoyment by the Residential Owners of their Condominiums or the Common Area.

(b) *Construction and Sales.* There are hereby reserved to Declarant, together with the right to grant and transfer the same to others, including Declarant's sales agents, representatives and assigns, over the Residential Project as the same may from time to time exist, easements and rights for construction, display (including the use of Units as models), maintenance, sales and exhibit purposes (including the use of signs and other advertising devices) in connection with the construction, marketing, and sale or lease of Condominiums within the Residential Project, including customer relations and providing post-sale customer service; *provided, however*, that such easements and rights shall terminate upon the Final Sale Date after any sales complex installed on the Residential Property has been removed. In connection with each of the foregoing purposes Declarant shall have the right to: (i) perform any and all architectural, engineering, construction, excavation, blasting, landscaping or related work and activities; (ii) store and use materials, equipment, vehicles, tools and machines which may be necessary or desirable in connection with such construction; (iii) perform maintenance, repair

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and replacement work on, and to make custom improvements, alterations and additions to uncompleted Improvements; and (iv) take such other action consistent with such easements. No Owner (other than Declarant) shall enter any construction area within the Residential Property or cross any fence or other barricade constructed to prevent such entry or otherwise impede or interfere with such development and construction.

(c) *Ventilation and Other Systems.* There is hereby reserved to Declarant, together with the right to grant and transfer same, easements and rights in, on, over, under, along and across all portions of the Common Area for the installation, maintenance, repair and replacement of ventilation and/or other systems and related Improvements.

(d) *Inspection and Cure Rights.* There are hereby reserved to Declarant, together with the right to grant and transfer same, easements and rights over the Residential Project to exercise the inspection rights under the Dispute Resolution Procedures and the inspection and cure rights granted to Declarant under Section 21.9.

3.2 **Parking.** Residential Owners will have the right to have one or more vehicles valet parked within the Parking Garage as provided in, and subject to the terms of, the Master Declaration.

3.3 **Storage Areas.**

3.3.1 *Assignment of Residential Storage Spaces.* So long as Declarant owns any portion of the Residential Property, Declarant has, and after Declarant no longer owns any portion of the Residential Property, the Association shall have, the sole right to assign to Residential Owners the exclusive right to use a Residential Storage Space subject to the terms of the Reciprocal Easement Agreement. Upon assigning a Residential Storage Space to a Residential Owner, Declarant (or, if applicable, the Association) shall designate such assignment in the records of the Association and the Residential Owner shall have the exclusive right to use the Assigned Storage Space, subject to the rights of the Hotel Owner, Declarant and the Association set forth in the Reciprocal Easement Agreement. Upon such assignment by Declarant (or, if applicable, the Association), the location of such Assigned Storage Space shall not be changed except as provided below. Upon conveyance of a Condominium by a Residential Owner to another Residential Owner, the storage rights assigned to such Residential Owner in the records of the Association shall automatically inure to the benefit of the new Residential Owner. After the Final Sale Date, Declarant may assign to the Association any Residential Storage Spaces not previously assigned by Declarant or convey or transfer (including a sale) such Residential Storage Spaces to certain Residential Owners.

3.3.2 *Relocation Rights.* The right of a Residential Owner to use an Assigned Storage Space is subject to the rights of the Hotel Owner to relocate the Assigned Storage Spaces, as provided in the Reciprocal Easement Agreement.

3.3.3 *Relocation Based Upon Agreement Between Residential Owners; Relinquishment.* If a Residential Owner desires to exchange its Assigned Storage Space with another Residential Owner, and both affected Residential Owners voluntarily agree to the exchange, and provided the two Residential Owners sign an agreement in a form prepared by the

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Association agreeing to the exchange, then, upon prior written approval of the Association, the Hotel Owner and the Hotel Operator, the Association may change its records to reflect the exchange requested by the two Residential Owners. The Association shall retain in its records the written agreement of the two Residential Owners. Upon the change of the records of the Association, then the new Assigned Storage Spaces shall inure to the benefit of the future Residential Owners of such Condominiums. In addition, a Residential Owner may relinquish its Assigned Storage Space by assigning its right to use the Assigned Storage Space to the Association on a form prepared by the Association. The Association shall then change its records to reflect the relinquishment.

3.3.4 *Lease Between Residential Owners.* If a Residential Owner desires to lease its Assigned Storage Space to another Residential Owner, provided the two Residential Owners sign a lease agreement in a form prepared by the Association, then upon prior written approval of the Association, the Hotel Owner and the Hotel Operator, the Association may change its records to reflect the lease. The Association shall retain in its records the written lease of the Assigned Storage Space.

3.3.5 *Charge Fees.* To the extent Declarant assigns to the Association any Residential Storage Spaces that are in excess of the Residential Storage Spaces assigned by Declarant to Residential Owners or a Residential Owner relinquishes an Assigned Storage Space to the Association, the Association shall have the right to (i) charge reasonable fees for the use of any such Residential Storage Spaces, and/or (ii) assign any such Residential Storage Spaces to any Residential Owner for such consideration as may be agreed upon by the Board and any such Residential Owner. Any such fees or consideration shall be paid to the Association.

3.4 **Limitations and Conditions on Easements and Licenses.** The easement rights and licenses herein granted and reserved are subject to the limitations and conditions set forth below.

3.4.1 Any limitations and restrictions set forth in the Master Project Documents and the Residential Documents.

3.4.2 All matters of record, including, without limitation, all covenants, conditions, restrictions, encumbrances, easements, dedications, and rights of way, if any, granted or reserved in, on, over and under the Residential Property.

3.4.3 The right of each Residential Owner to the exclusive use and occupancy, for the purposes designated in this Declaration, of the Exclusive Use Common Area assigned to his or her respective Unit.

3.4.4 Applicable laws and regulations, including, without limitation, applicable building code requirements, the right of the Association to consent to or otherwise cause the construction of additional Improvements on the Common Area and to consent to or otherwise cause the alteration or removal of any existing Improvements on the Common Area for the benefit of the Members of the Association.

3.4.5 The right of the Association, acting through the Board, to restrict access to certain portions of the Common Area to such authorized personnel as the Association determines

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to be reasonably necessary in connection with the exercise of any maintenance or other rights or discharge of any obligations. The portions of the Common Area to which access may be restricted, include, without limitation, mechanical equipment and facilities rooms, storage rooms, operations and facilities rooms, boiler and chiller rooms, trash and recycling rooms, roofs, maintenance areas, landscape area and other such areas within the Residential Project.

3.4.6 The right of the Association, acting through the Board, to grant, consent to or join in the grant or conveyance of easements, licenses or rights-of-way in, on or over the Common Area for purposes not inconsistent with the intended use of the Residential Property as a condominium project, and provided that same is not in violation of the Restrictions or applicable laws or regulations.

3.4.7 The right of the Association and its agents, employees and contractors to enter any portion of the Residential Property to cure any violation of this Declaration or the other Residential Documents as provided in Section 4.2.5.

3.4.8 The right of the Association, acting through the Board, to establish uniform Association Rules in accordance with Section 4.2.14 of this Declaration and the rules, regulations and guidelines set forth in such Association Rules.

3.4.9 The right of the Association, acting through the Board, to suspend the rights and easements of any Residential Owner, and the Persons deriving such rights and easements from any Residential Owner, for use and enjoyment of the Residential Project Amenities, (i) for any period during which the payment of any Assessment against the Residential Owner and his or her Condominium remains delinquent and (ii) for a period not to exceed thirty (30) days for any single violation of this Declaration or the other Residential Documents other than the failure to pay Assessments; *provided*, that any suspension of such rights and easements except for failure to pay Assessments shall be made only after Notice and Hearing.

3.4.10 The right of the Association to limit, on a reasonable basis, the number of Permittees using any facilities located within the Common Area as set forth in the Association Rules. Without limiting the foregoing the Association shall have the right (i) to reasonably limit the number of guests and tenants of the Residential Owners using the Residential Project Amenities and (ii) to limit the use of the Residential Project Amenities by staff members and/or employees of a Residential Owner.

3.4.11 The right of the Association, acting through the Board, to temporarily restrict access to certain limited Common Area to accommodate private Residential Owner events; *provided*, that the right to have such events is shared by all Residential Owners, subject to the Restrictions and Applicable Laws.

3.4.12 The right of the Association to grant easements under, in, upon, across, over, above or through any portion of the Common Area for any required or appropriate installation, maintenance, repair or replacement of Residential Utility Facilities for the benefit of the Common Area provided the Association has complied with the requirements set forth in the Reciprocal Easement Agreement and the Master Declaration. The size, scope and location of

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any easements to be established after the date of recordation of this Declaration shall be determined by the Association in a reasonable and non-discriminatory manner to enhance the operation of the Common Area and to comply with Applicable Laws.

3.4.13 The rights and reservations of Declarant as set forth in this Declaration.

3.4.14 The rules, regulations and guidelines set forth in the Hotel Owner Rules.

3.4.15 The right of the Hotel Owner to manage the Building Shared Use Areas, Shared Building Facilities and Shared Utility Facilities pursuant to and as set forth in the Reciprocal Easement Agreement.

3.5 **Duration of Residential Owner's Rights.** The rights of a Residential Owner shall be for a term and duration coextensive with the Residential Owner's title or interest in and to a Condominium. Upon conveyance of a Condominium, such rights shall pass to the successor Residential Owner of the Condominium being conveyed.

3.6 **No Third Party Beneficiaries.** Nothing contained in this Article III is intended to grant any third party beneficiary rights or any other rights to a Permittee. No Permittee shall have any rights under this Article III independent of the rights granted to a Residential Owner under this Declaration.

3.7 **No Separate Conveyance.** The interest of each Residential Owner in the use and benefit of the Common Area shall be appurtenant to the Condominium owned by the Residential Owner. No Condominium shall be conveyed by a Residential Owner separately from the interest in the Common Area and none of the easements granted herein to the Residential Owner shall be conveyed separately from the interest in the Common Area. Any conveyance of any Condominium shall automatically transfer the interest in the Common Area and the Residential Owner's right to use the Common Area as provided in this Declaration without the necessity of express reference in the instrument of conveyance.

3.8 **Amendment to Eliminate Easements.** Until the Final Sale Date, (i) this Declaration cannot be amended to modify or eliminate the easements reserved to Declarant without prior written approval of Declarant and any attempts to do so shall have no effect, and (ii) any attempt to modify or eliminate this Article or any provision hereof shall likewise require the prior written approval of Declarant.

#### **ARTICLE IV. THE ASSOCIATION**

4.1 **Organization.** The Association is a nonprofit mutual benefit corporation formed under the California Nonprofit Mutual Benefit Corporation Law. Upon conveyance of the first Condominium to a Residential Owner pursuant to a Public Report, or such earlier date as may be selected by Declarant, the Association shall be charged with the duties and invested with the powers set forth in the Residential Documents. Except as to matters requiring the approval of Members as set forth in the Residential Documents, the affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint. Such election or appointment shall be in accordance with the Residential Documents. Except as otherwise

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provided in the Residential Documents, all matters requiring the approval of Members shall be deemed approved if (i) Members holding a majority of the total Voting Power consent to them in writing as provided in the Bylaws, (ii) such matters are approved by a majority vote of a quorum of Members at any regular or special meeting held in accordance with the Bylaws, or (iii) in certain situations set forth in Section 4.3, such matters are approved in accordance with the procedures set forth in Section 4.3.

**4.2 Powers of the Association.** The Association shall have all the powers of a nonprofit corporation organized under the California Nonprofit Mutual Benefit Corporation Law subject only to such limitations on the exercise of such powers as are set forth in the Residential Documents. Subject to the limitations set forth in Section 4.4, it shall have the power to do any lawful thing that may be authorized, required or permitted to be done by the Association under the Residential Documents, and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of the Association, including, without limitation, the powers set forth below.

**4.2.1 Performance of Duties.** The Association shall have the power to undertake all of the express duties required by the Master Project Documents, the Reciprocal Easement Agreement and this Declaration to be done by the Association.

**4.2.2 Rights of Enforcement Against Residential Owners.** The Association, in its own name and on its own behalf, or on behalf of the Residential Owners, or for the benefit of the Master Association or the Hotel Owner, may commence and maintain actions for damages or to restrain and enjoin any actual or threatened breach of the Residential Documents, the Master Project Documents or the Hotel Owner Rules, and may enforce by mandatory injunction or otherwise all of the requirements of the Residential Documents, the Master Project Documents and the Hotel Owner Rules. Nothing herein shall take away, diminish or otherwise affect: (i) the right of the Master Association (or any manager of the Master Association, on its behalf) to take action, or restrain or enjoin any actual or threatened breach of the Master Project Documents and/or the Residential Documents by any Residential Owner to the extent permitted under the Master Project Documents and/or the Residential Documents; or (ii) the right of the Hotel Owner (or the Hotel Operator, on its behalf) to take any action, or restrain or enjoin any actual or threatened breach of the Reciprocal Easement Agreement or the Hotel Owner Rules by any Residential Owner, to the extent permitted under the Reciprocal Easement Agreement. In addition, the Association may: (a) enter any portion of the Residential Property or within the Units as provided in Section 4.2.5 to enforce any of its rights or fulfill any of its obligations; (b) temporarily suspend the rights and privileges of the Residential Owners to use the Residential Project Amenities; (c) following Notice and Hearing, assess Remedial Assessments and/or monetary fines against any Residential Owner for any violation of the Residential Documents, the Master Project Documents or the Hotel Owner Rules; and/or (d) exercise its remedies under Article VI against any Residential Owner for failure to pay Assessments in accordance with the procedures set forth in this Declaration and the other Residential Documents or for failure to pay Master Assessments in accordance with the procedures set forth in this Declaration and the Master Declaration.

**4.2.3 Manager.** The Association may employ a manager or other Persons and may contract with independent contractors or managing agents ("Manager") to perform all or

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any part of the duties and responsibilities of the Association, subject to the requirements of the Residential Documents, except for the responsibility to levy fines, impose discipline, hold hearings, file suit, or record or foreclose liens. A Manager shall have the benefit of all easements granted to the Association under this Declaration.

4.2.4 *Assessments.* The Association shall have the power to establish, levy and collect Assessments against the Residential Owners and to enforce payment of such Assessments, in accordance with the provisions of the Residential Documents.

4.2.5 *Right of Entry.* Except in the case of Emergency, in which case no prior notice need be given, the Association or any authorized representative of the Association shall have the right, upon not less than forty-eight (48) hours' prior notice and during reasonable hours, to enter into any Unit for the purpose of: (i) construction, maintenance or Emergency repair, including without limitation, those repairs contemplated in Section 3.1.5; or (ii) enforcing the provisions of this Declaration, the Reciprocal Easement Agreement or the Master Declaration. Such persons shall not be deemed guilty of trespass or invasion of privacy by reason of such entry. Nothing herein shall be construed to impose any obligation upon the Association to maintain or repair any property or Improvements required to be maintained or repaired by the Residential Owners. Any damage caused to a Unit by such entry by the Association or by any person authorized by the Association shall be repaired by the Association as a Common Expense of the Association. Upon receipt of reasonable notice from the Association (which shall in no event be less than fifteen (15) days nor more than thirty (30) days) each Owner shall vacate his or her Unit in order to accommodate efforts by the Association to perform any other maintenance or repairs pursuant to this Declaration. The Association shall have the right of entry to the Units and the right to remove Residential Owners from their Units, as necessary, to accomplish its duties as provided herein. The cost of performing any such maintenance or repairs shall be a Common Expense of the Association; *provided, however*, each Residential Owner shall bear his or her own costs of temporary relocation.

4.2.6 *Capital Improvement.* Subject to the terms of this Declaration, the Reciprocal Easement Agreement and the Master Project Documents, the Association may approve the construction, reconstruction, installation, replacement, refinishing or acquisition of a particular capital Improvement or portion thereof on the Common Area.

4.2.7 *Personal Property.* The Association may acquire and hold, as trustee for the benefit of its Members, tangible and intangible personal property and dispose of the same by sale or otherwise, subject to the limitations set forth in Section 4.4 below.

4.2.8 *Contract for Goods and Services.* The Association shall have the power to contract for goods and services for the benefit of the Residential Project and Residential Owners that are necessary for the Association to perform its duties and obligations hereunder, subject to the limitations set forth in Section 4.4 below.

4.2.9 *Provide Services to Residential Owners.* The Association shall have the power to provide, or to contract with the Manager for the provision of, concierge, door attendant, lobby attendant and similar services for the benefit of the Residential Project and Residential Owners.

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4.2.10 *Enter Into Maintenance Agreements.* The Association shall have the power to enter into maintenance or other agreements with Declarant or other service providers.

4.2.11 *Easements.* The Association shall have the power to convey easements over all or any portion of the Common Area (including the Common Element).

4.2.12 *Borrow Funds.* The Association shall have the right to borrow money to improve, repair or maintain the Common Area and to hypothecate any or all real or personal property owned by the Association, including pledging as collateral the Assessment liens levied thereon; *provided, however,* that, the borrowing of any money or hypothecation of any real or personal property in excess of five percent (5%) of the Common Expenses of the Association for that Fiscal Year shall require the approval by written ballot of at least sixty-seven percent (67%) of each class of Members.

4.2.13 *Civil Code Sections 896 and 897 Claims.* The sole and exclusive authority to initiate claims on behalf of the Association in connection with the areas within the Residential Project maintained by the Association for alleged noncompliance with the functionality standards set forth in California Civil Code Sections 896 and 897 shall rest with the Board members elected solely by Class A Members described in Section 5.2 (the “**Non-Declarant Directors**”). Any Non-Declarant Director may at any time request a meeting of the Board for the purpose of discussing, inspecting, investigating and/or initiating any claims under California Civil Code Sections 896 or 897. Notice of the meeting shall be sent in the same manner as notice for special meetings of the Board. Any member of the Board appointed by Declarant or elected by votes cast by Declarant shall be entitled to attend the meeting but shall not be entitled to vote. The meeting shall be open for all Members of the Association unless the Non-Declarant Directors adjourn to an executive session as authorized by the Bylaws. The decision of a majority of the Non-Declarant Directors shall control. If the Non-Declarant Directors elect to initiate a claim, the authority to initiate a claim also shall require the approval of the votes cast by a majority of the Class A Members present in person or by proxy at a duly held meeting of Members. Any Non-Declarant Director may call a special meeting of the Members for this purpose. The claim is subject to the provisions and procedures set forth in Sections 21.8, 21.9 and 21.10, if applicable, and in the Dispute Resolution Procedures. If requested by the Non-Declarant Directors, the Association shall provide the administrative support for the notice and conduct of its meetings and any meeting of the Members called to approve the initiation of a claim, in addition, the Association shall provide such reasonable financial support as may be necessary in order for the Non-Declarant Directors to inspect, investigate and/ or initiate the claim on behalf of the Association, subject to the applicable requirements and procedures set forth in Sections 21.8, 21.9 and 21.10, if applicable, and in the Dispute Resolution Procedures. The provisions of this Section are effective automatically on the date the first Non-Declarant Director is elected to the Board and terminate effective automatically on the date there are only Non-Declarant Directors serving on the Board.

4.2.14 *Association Rules.* The Association shall have the power to adopt, amend and repeal from time to time such Association Rules as it considers appropriate. The Association Rules shall apply to the Residential Owners and their Permittees and may regulate the use of the Common Area. However, the Association Rules shall not be inconsistent with or materially alter any provisions of the Residential Documents, the Master Project Documents or the Hotel Owner



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Rules. A copy of the Association Rules shall be mailed or otherwise delivered to each Residential Owner. In the case of any conflict between any of the Association Rules and any other provisions of the Residential Documents, the Master Project Documents or the Hotel Owner Rules, the conflicting Association Rule shall be deemed to be superseded by the provisions of the other Residential Documents, the Master Project Documents or the Hotel Owner Rules. Notwithstanding the foregoing, the Association shall comply with the requirements and procedures set forth in California Civil Code Section 4340, *et seq.*, with respect to Operating Rules.

4.2.15 *Collection of Master Association Assessments.* The Association, on behalf of and acting as agent for the Residential Owners, shall have the power to collect and pay to the Master Association prior to delinquency all Master Association Assessments levied against Units pursuant to the Master Declaration.

4.3 **Duties of the Association.** In addition to the powers delegated to it by its Articles and Bylaws, and without limiting their generality, the Association, acting by and through the Board, shall conduct all business affairs of common interest to all Residential Owners and perform each of the duties set forth below.

4.3.1 *Compliance with Master Project Documents and Project Approvals.* The Association shall comply with all requirements and fulfill all duties and obligations imposed upon the Association under the Master Project Documents and the Project Approvals and shall cooperate with the Master Association to ensure the efficient operation and maintenance of the Century Plaza Project.

4.3.2 *Operation and Maintenance.* The Association shall perform all of the maintenance required to be performed by the Association under Article VIII and any other maintenance required to be performed by the Association by this Declaration, the Common Area Maintenance Program, the Reciprocal Easement Agreement and the Master Declaration.

4.3.3 *Annual Inspection.* The Association shall conduct the annual inspection described in Section 8.6.

4.3.4 *Compliance with the Reciprocal Easement Agreement.* The Association shall comply with all of the obligations under the Reciprocal Easement Agreement that are imposed on the Association or delegated to the Association under the Reciprocal Easement Agreement, shall reimburse the Hotel Owner for the Association's share of Shared Expenses (as defined in the Reciprocal Easement Agreement) and for Residential Chilled Water Expenses (as defined in the Reciprocal Easement Agreement), and shall cooperate with the Hotel Owner and the Hotel Operator to ensure the efficient operation and maintenance of the Combined Project.

4.3.5 *Master Association Membership; Master Board Member.*

(a) The Association is a member of the Master Association and, pursuant to the Master Project Documents, is entitled to one (1) vote as a Master Association member. In the event the Association is required to cast its vote as a member of the Master Association, such vote shall be cast as determined by a majority of the Board; *provided however*, that in the event an affirmative vote of a majority of a quorum of the members of the Master

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Association would be required to increase Master Association Assessments pursuant to Section 5605 of the California Civil Code, such vote shall be cast as determined by a majority of a quorum of the Members of the Association, pursuant to Section 4070 of the California Civil Code, at a Member meeting or election.

(b) The Association shall annually appoint either the President or Vice President of the Association to serve as the Association's member on the Master Board ("**Master Board Member**"). To the extent the President or Vice President is not available, the Board may elect to have another officer participate at Master Board meetings on a temporary basis. In serving on the Master Board, the Master Board Member and/or any other officer participating at Master Board meetings shall vote and otherwise take such actions as are consistent with the directions provided to such Master Board Member and/or other officer by the Board.

4.3.6 *Water and Other Utilities.* To the extent not provided by the Master Association or the Hotel Owner, the Association shall acquire, provide and pay for utilities and other services for the Common Area to the extent necessary.

4.3.7 *Building Plans.* The Association shall provide written notice to the Hotel Owner and the Master Association of any changes to the Residential Project and any other areas which the Association is obligated to maintain which alter any of the Building Plans and provide amendments or supplements to such Building Plans to the Hotel Owner and the Master Association.

4.3.8 *Common Expenses; Taxes and Assessments.* The Association shall pay all Common Expenses and all real and personal property taxes and assessments and all other taxes levied against the Association or Common Area, if any. Such taxes and assessments may be contested by the Association if they are paid or a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes.

4.3.9 *Architectural Control.* The Association shall exercise architectural control to the extent required under Article IX of this Declaration and shall have the power to appoint an Architectural Committee. The Association shall submit any applications for architectural review by the Master Association and/or the Hotel Owner on behalf of Residential Owners to the Master Association and/or the Hotel Owner, if such review is required pursuant to the Master Declaration and/or the Reciprocal Easement Agreement, as applicable.

4.3.10 *Reserves.* The Association shall establish and maintain a working capital and contingency fund as required under the Residential Documents. If the Association elects to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the Association shall notify the Members of that decision in the next available mailing to all Members pursuant to California Corporations Code Section 5016. The notice shall inform Members of the availability of an accounting of these expenses. The Association shall distribute a written accounting of this expense to the Members on at least a quarterly basis, with the first accounting to be delivered no later than the thirtieth (30<sup>th</sup>) day following the Association's decision to use reserve funds for litigation, either directly or through a transfer to operating funds. In any proposed litigation in which the amount in controversy is expected to exceed \$25,000 (measured in Constant Dollars, updated annually at the beginning of each Fiscal Year),

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the first accounting shall include a description of expenses paid to date, a description of the principal terms and conditions of any contract with any Person providing services in connection with the litigation, including attorneys and expert witnesses, a good faith estimate of the total legal fees, expert fees and other litigation costs that may be incurred, and a sample disclosure that shall be delivered to the Residential Owners who shall provide prospective purchasers, lenders and other parties that have obtained or may obtain an interest in any Owner's Condominium regarding the litigation. In each subsequent accounting, the information required in the first accounting shall be appropriately updated.

4.3.11 *Reporting Requirements.* The Association shall prepare and distribute such financial statements and reports as may be required by the Residential Documents and by Applicable Laws.

4.3.12 *Insurance.* The Association shall obtain, from reputable insurance companies, and maintain the insurance described in Article XI.

4.3.13 *Warranties.* The Association shall comply with the terms of any warranty in favor of the Association for any equipment or facilities within the Common Area and any other areas which the Association is obligated to maintain. The Association shall not take any action which will impair the effectiveness of any warranties, such as terminating any maintenance contracts mandated by certain warranties, unless the Association replaces such maintenance contracts as required by the terms of any warranty.

4.3.14 *Members' Approval of Certain Actions.* If a claim or other action brought by the Association against Declarant, including, without limitation, claims brought under California Civil Code Section 895 *et seq.*, involving allegations of construction defects relating to the portion of the Common Area which the Association is obligated to maintain is not resolved, the Association shall not initiate a further action or arbitration proceeding under Section 18.3 (including any proceeding under the Dispute Resolution Procedures) or otherwise without first obtaining the consent of the Residential Owners other than Declarant constituting a majority of the Voting Power. Nothing contained herein is intended to give the Association any standing to bring any action against Declarant for areas of the Residential Property which the Association is not maintaining or required to maintain under the Residential Documents and Master Project Documents.

4.3.15 *Notice Prior to Litigation.* The Association shall notify all Residential Owners of any litigation filed for or on behalf of the Association pursuant to the provisions of Section 18.3 and the Dispute Resolution Procedures.

4.3.16 *Use of Proceeds to Repair.* If the Association receives, on its own behalf or for the benefit of the Residential Owners, any proceeds as a result of any construction defect or other claims or litigation brought by the Association, then the Association shall apply such proceeds first for the purpose of repairing such defects or replacing reserve funds previously utilized by the Association to cause such repairs and then, to the costs of such litigation. Any excess proceeds shall be applied as determined by the Board, subject to any requirements established by the nonprofit mutual benefit laws of the State of California and any other Applicable Laws.

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4.3.17 *Residential Owner Maintenance Manuals.* The Association shall maintain at the offices of the Association a copy of the Residential Owner Maintenance Manual provided by Declarant to the Residential Owners and shall make a copy available to every Residential Owner upon request. The Association shall have the right to charge the requesting Residential Owner a fee for the copying of such Residential Owner Maintenance Manual. The Association may, from time to time, make appropriate revisions to the Residential Owner Maintenance Manual based on the Association's review thereof, to update such manual to provide for maintenance according to current industry practices so long as such changes do not reduce the useful life or functionality of the items being maintained or reduce any standards of maintenance below the Project Quality Standard for any item required to be maintained in accordance with the Project Quality Standard.

4.3.18 *Management Agreements.* The Association shall comply with any restrictions on use of names, logos and other marks of the Manager that may be contained in any Residential Management Agreement or other agreement between the Association and the Manager.

4.4 **Limitations on Authority of Board.** Notwithstanding the powers of the Association as set forth in Section 4.2 hereof, the Board shall not take any of the following actions without the prior vote or written consent of a majority of the Class A Members and the Class B Members, if any, in the Association, including a majority of the Voting Power residing in Members other than Declarant.

4.4.1 *Third Person Contracts.* Enter into a contract with a third person or entity wherein such person or entity will furnish goods or services for the Common Area or the Association for a term longer than one (1) year with the following exceptions:

(a) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; *provided, however*, the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate.

(b) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration provided that the policy permits short rate cancellation by the insured.

(c) Lease agreements for laundry room fixtures and equipment of not to exceed five (5) years duration provided that the lessor under the agreement is not an entity in which Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(d) An agreement for cable television services and equipment or satellite dish television services and equipment of not to exceed five (5) years duration provided that the supplier is not an entity in which Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(e) An agreement for sale or lease of burglar alarm and fire alarm equipment, installation and services of not to exceed five (5) years duration provided that the supplier or suppliers are not entities in which Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

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(f) A management contract (e.g., a management agreement and/or any licensing agreement(s) entered into in connection with such management agreement) for a term not to exceed fifteen (15) years, which may provide for automatic renewals for successive five (5) year periods unless, at least one year prior to the end of any such period seventy-five percent (75%) of the Members vote not to renew such management contract.

(g) A contract reviewed by the DRE.

(h) A contract for a term not to exceed three (3) years that is terminable by the Association after no longer than one (1) year without cause, penalty or other obligation upon ninety (90) days written notice of termination to the other party.

4.4.2 *Limitation on Aggregate Expenditures.* Incur aggregate expenditures for capital improvements to the Common Area in any Fiscal Year in excess of five percent (5%) of the gross expenses of the Association for that Fiscal Year (as set forth in the Budget).

4.4.3 *Limitation on Sales of Association Property.* Sell during any Fiscal Year property of the Association having an aggregate fair market value greater than five percent (5%) of the gross expenses of the Association for that Fiscal Year (as set forth in the Budget).

4.4.4 *Limitation on Compensation.* Pay compensation to members of the Board, or to officers of the Association, for services performed in the conduct of the Association's business; *provided, however*, the Board may cause a director or an officer to be reimbursed for expenses incurred in carrying on the business of the Association.

4.4.5 *Chilled Water Service.* Instruct the Hotel Owner to exercise the Chilled Water Termination Option (as defined in the Reciprocal Easement Agreement) pursuant to Section 5.3.3 of the Reciprocal Easement Agreement or consent to any amendment of the Chilled Water Contract (as defined in the Reciprocal Easement Agreement) that would increase the Residential Chilled Water Expenses (as defined in the Reciprocal Easement Agreement) or otherwise adversely impact the Association and/or the Residential Owners.

#### 4.5 Personal Liability.

4.5.1 *Damages Limitation and Indemnification.* No volunteer officer or volunteer director of the Board or of any committee of the Association (each a "**Management Party**") shall be personally liable to any Residential Owner or to any other party, including the Association, for any act or omission of any Management Party if (i) such Person has, on the basis of such information as may be possessed by him or her, acted in good faith within the scope of the Person's Association duties and such act or omission was not willful, wanton or grossly negligent (collectively, an "**Official Act**"), (ii) such Person is a tenant of a Unit or an Owner of no more than two (2) Units and (iii) the Association maintained and had in effect at the time the act or omission occurred and at the time a claim was made one (1) or more policies of insurance which shall include coverage for (A) general liability of the Association and (B) individual liability of officers and Board members for negligent acts or omissions in that capacity; *provided* that both types of coverage are in the amounts required in Article XI hereof. The Association has the power and duty to indemnify, defend, protect and hold harmless each Management Party for all damages, and expenses incurred (including, without limitation, reasonable attorneys'

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fees), and satisfy any judgment or fine levied as a result of any action or threatened action brought because of an act or omission that such Person reasonably believed was an Official Act. Management Parties are deemed to be agents of the Association when they are performing Official Acts for purposes of obtaining indemnification from the Association pursuant to this Section. The entitlement to indemnification under this Declaration inures to the benefit of the estate, executor, administrator and heirs of any Person entitled to such indemnification. The Association has the power, but not the duty, to indemnify any Person that is not a Management Party acting as an agent of the Association for damages incurred, pay expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action because of an Official Act. The Association also has the power, but not the duty, to contract with any Person to provide indemnification in addition to any indemnification authorized by law on such terms and subject to such conditions as the Association may impose.

4.5.2 *Volunteer Status.* A Board member or Association officer who at the time of the act or omission was Declarant or received direct or indirect compensation as an employee from Declarant or from a financial institution that purchased a Condominium at a judicial or nonjudicial foreclosure of a Mortgage is not a volunteer for purposes of Section 4.5.1. The payment of actual expenses incurred by a Board member or Association officer does not affect the member's or officer's status as a volunteer for purposes of Section 4.5.1.

## ARTICLE V.

### MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

#### 5.1 Membership.

5.1.1 *Qualifications.* Each Residential Owner of a Condominium that is subject to assessment by the Association, including Declarant, shall be a Member of the Association. Ownership of a Condominium or interest in it shall be the sole qualification for membership in the Association. Each Residential Owner shall automatically become a Member of the Association upon becoming the owner of a Condominium and shall remain a Member of the Association until its ownership interest in a Condominium in the Residential Project ceases, at which time its membership in the Association shall automatically cease.

5.1.2 *Members' Rights and Duties.* Each Member shall have the rights, duties, and obligations set forth in this Declaration and the other Residential Documents, as the same may from time to time be amended.

5.1.3 *Transfer of Membership.* The membership of each Residential Owner shall be appurtenant to each such Residential Owner's Condominium, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except upon a transfer of title to such Condominium or interest in it and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Condominium or interest in it shall operate automatically to transfer the appurtenant membership right in the Association to the new Residential Owner.

5.1.4 *Commencement of Voting Rights.* A Residential Owner's right to vote, including Declarant's, shall not vest until Regular Assessments have been levied upon such

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Residential Owner's Condominium as provided in this Declaration. All voting rights shall be subject to the restrictions and limitations provided for in this Declaration and in the other Residential Documents.

5.2 **Classes of Voting Membership.** The Association shall have two (2) classes of voting membership as described below. The voting rights described in Sections 5.2.1 and 5.2.2 below shall constitute the Voting Power of the Association:

5.2.1 *Class A Members.* Until such time as the Class B membership no longer exists, Class A Members shall be all Residential Owners with the exception of Declarant and shall be entitled to one (1) vote for each Condominium owned. When more than one (1) person holds an interest in any Condominium, all such persons shall be Members. The vote for such Condominium shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Condominium.

5.2.2 *Class B Member.* The Class B Member shall be Declarant and shall be entitled to three (3) votes for each Condominium owned. The Class B Member voting rights shall expire and the Class B Member shall be converted and become a Class A Member entitled to one (1) vote for each Condominium owned on the happening of the earliest of the following events:

- (a) when the total outstanding votes held by Class A Members equals the total outstanding votes held by the Class B Member; or
- (b) four (4) years from the Initial Sale Date.

As long as the Class B membership exists, no action by the Association that must have the prior approval of Members of the Association shall be deemed approved by the Members unless approved by the applicable percentage of Class A and Class B Members, except as set forth in Sections 4.3.14, 20.2 and 21.9.5. Upon conversion to a single Class A voting membership, any action by the Association that must have the prior approval of the Members shall require approval by at least a majority of the Members of the Association (including Declarant as a Class A Member) and at least a majority of Members other than Declarant.

5.2.3 *Joint Residential Owner Votes.* The voting rights for each Condominium may not be cast on a fractional basis. If the joint Owners of a Condominium are unable to agree among themselves as to how their voting rights shall be cast, they shall forfeit the vote on the matter in question. If any Residential Owner exercises the voting rights of a particular Condominium, it will be conclusively presumed for all purposes that such Residential Owner was acting with the authority and consent of all other Residential Owners of the same Condominium. If more than one (1) person or entity exercises the voting rights for a particular Condominium, their votes shall not be counted and shall be deemed void.

5.3 **Suspension of Voting Rights.** The Association shall have the authority, after Notice and Hearing, to suspend the voting rights of any Member for any period during which the payment of any Assessment against the Member and the Member's Condominium remains delinquent. Any suspension of the voting rights of a Member for nonpayment of any Assessment

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shall not constitute a waiver or discharge of the Member's obligation to pay the Assessments provided for herein.

## **ARTICLE VI. ASSESSMENTS**

**6.1 Creation of Obligation for Assessments.** Declarant, for each Condominium owned by it, hereby covenants and agrees to pay, and each Residential Owner, by acceptance of a deed to a Condominium whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) Regular Assessments, (2) Special Assessments, (3) Reconstruction Assessments, (4) Capital Improvement Assessments, (5) Emergency Assessments, (6) Reimbursement Assessments, and (7) Remedial Assessments. Each of the foregoing shall be established and collected as provided herein. The Association shall not levy or collect any Assessment that exceeds the amount necessary for the purpose for which it is levied. Except as provided in this Section 6.1, all Assessments (other than Remedial Assessments), together with interest, costs, and reasonable attorneys' fees for the collection thereof, shall be a charge on the Condominium against which such Assessment is made. All Assessments shall be payable in the amounts specified by the particular Assessment and no offsets against such amounts shall be permitted for any reasons, including, without limitation, a claim that the Association is not properly exercising its duties of maintenance, operation or enforcement. Each such Assessment (including Remedial Assessments), together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of the Condominium at the time when the Assessment fell due. If more than one Person is the Owner of a Condominium at the time when the Assessment fell due, the personal obligation to pay such Assessment shall be both joint and several. The personal obligation for delinquent Assessments shall not pass to any new Owner ("**Purchaser**") unless expressly assumed in writing by the Purchaser.

**6.2 Maintenance Funds of Association.** The Board shall establish separate Association Maintenance Fund accounts consisting of the Operating Fund (defined below), the Reserve Fund (defined below) and such other accounts as the Board shall establish from time to time, into which shall be deposited all monies paid to the Association for maintenance of the Common Area and for Common Expenses, and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under this Declaration related to the Common Area and Common Expenses. The Association Maintenance Funds may be established as trust accounts at a banking or savings institution and shall include: (1) a fund for current Common Expenses of the Association (the "**Operating Fund**") related to the Common Area and Common Expenses, (2) an adequate fund for capital improvements, replacements, painting and repairs of the Common Area (which cannot normally be expected to occur on an annual or more frequent basis), and for payment of deductible amounts for policies of insurance which the Association obtains as provided in Article XI hereof (the "**Reserve Fund**"), and (3) any other funds which the Board may establish with respect to the Common Area or with respect to Common Expenses to the extent necessary under the provisions of this Declaration. Nothing contained in this Section 6.2, or any other provision in this Declaration shall limit, preclude or impair the establishment of additional Association Maintenance Funds, so long as the amounts assessed to, deposited into, and disbursed from any such Association Maintenance Fund are earmarked for specified purposes authorized by this Declaration.



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Notwithstanding the foregoing, in the event that the amount in either the Operating Fund and/or the Reserve Fund exceeds any FDIC deposit insurance limits, then any and all such excess portions of the Operating Fund and/or the Reserve Fund shall be deposited into different banking or savings institutions so as to provide the greatest protection for both the Operating Fund and the Reserve Fund.

6.3 **Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively to: (a) promote the recreation, health, safety and welfare of the Residential Owners, (b) operate, replace, improve and maintain the Common Area, and (c) discharge any other obligations of the Association under this Declaration, the Reciprocal Easement Agreement and/or the Master Declaration. All amounts deposited into the Association Maintenance Funds for the Common Area must be used solely for the common benefit of all of the Residential Owners for purposes authorized by this Declaration. Disbursements from the Operating Fund shall be made by the Board for such purposes as are necessary for the discharge of its responsibilities herein for the common benefit of all of the Owners, other than those purposes for which disbursements from the Reserve Fund are to be used. Disbursements from the Reserve Fund shall be made by the Board only for the purposes specified in this Article and in Sections 5510 and 5515 of the California Civil Code, as it may be amended from time to time. Nothing in this Declaration shall be construed in such a way as to permit the use of Assessments or funds to abate any annoyance or nuisance emanating from outside the boundaries of the Residential Property; *provided, however* that reimbursements to the Hotel Owner pursuant to the Reciprocal Easement Agreement shall not be considered an abatement of any annoyance or nuisance emanating from outside the boundaries of the Residential Property. Regular Assessments shall be used to satisfy Common Expenses of the Association.

6.4 **Limitations on Regular Assessment Increases.** The Board shall levy Regular Assessments in accordance with the following provisions:

6.4.1 *Maximum Authorized Regular Assessment for Initial Year of Operations.* Until the first day of the Fiscal Year immediately following the Fiscal Year in which Regular Assessments commence, the Board may not levy a Regular Assessment per Condominium in an amount which exceeds one hundred twenty percent (120%) of the amount of Regular Assessments disclosed in the Budget at the time Regular Assessments commence unless the Board first obtains the approval of Residential Owners casting a majority of votes at a meeting or election of the Association in which more than fifty percent (50%) of such Members are represented (collectively, an "**Increase Election**"); *provided, however*, that except as may be required by Applicable Laws, Master Association Assessments that are collected by the Association as agent for the Residential Owners in accordance with this Declaration and the Master Declaration and were approved to the extent required under the Master Declaration and, if applicable, under Section 4.3.5(a) shall not be included when calculating whether a Regular Assessment per Condominium is in an amount which exceeds one hundred twenty percent (120%) of the amount of Regular Assessments disclosed in the Budget at the time Regular Assessments commence. Notwithstanding the foregoing, this Section does not limit Regular Assessment increases necessary for addressing an Emergency Situation.

6.4.2 *Maximum Authorized Regular Assessment for Subsequent Fiscal Years.* Starting with the first Fiscal Year immediately following the Fiscal Year in which Regular

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Assessments commence, the Board may only levy Regular Assessments if they have complied with the provisions of Sections 5600 and 5605 of the California Civil Code. For purposes of determining compliance with Section 5605 of the California Civil Code, except as may be required by Applicable Laws, Master Association Assessments that are collected by the Association as agent for the Residential Owners in accordance with this Declaration and the Master Declaration and were approved to the extent required under the Master Declaration and, if applicable, under Section 4.3.5(a) shall not be included when calculating whether a Regular Assessment per Condominium is in an amount which exceeds one hundred twenty percent (120%) of the amount of Regular Assessments for the preceding Fiscal Year. Notwithstanding the foregoing, this Section does not limit Regular Assessment increases necessary for addressing an Emergency Situation as provided in Section 5610 of the California Civil Code.

**6.4.3 Supplemental Regular Assessments.** If the Board, by majority vote, determines that the important and essential functions of the Association may be properly funded by a Regular Assessment in an amount less than the maximum authorized Regular Assessment described above, it may levy such lesser Regular Assessment. If the Board determines that the estimate of total charges for the current year is or will become inadequate to meet all applicable Common Expenses for the Residential Property for any reason, it shall immediately determine the approximate amount of the inadequacy. Subject to the limitations described in Sections 6.4.1 and 6.4.2 above and Section 6.4.4 below, the Board shall have the authority to levy, at any time by a majority vote, a supplemental Regular Assessment reflecting a revision of the total charges to be assessed against each Condominium.

**6.4.4 Emergency Situations.** Notwithstanding the limitations in the foregoing Sections, Emergency Assessments may be levied to cover expenses arising due to the following situations (each an "Emergency Situation"):

- (a) An extraordinary expense required by an order of a court;
- (b) An extraordinary expense necessary to repair or maintain the Residential Property or any portion thereof for which the Association is responsible where a threat to personal safety on the Residential Property is discovered; or
- (c) An extraordinary expense necessary to repair or maintain the Residential Property or any portion thereof, for which the Association is responsible that could not have been reasonably foreseen by the Board when preparing the Budget, or the summary thereof, pursuant to Section 5300 of the California Civil Code. Prior to the imposition or collection of an Assessment pursuant to this subparagraph (c), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Members with the notice of Assessment.

## **6.5 Regular Assessments/Commencement-Collection.**

**6.5.1 Regular Assessments.** Regular Assessments shall be levied in accordance with this Section. The Budget for the Association shall reflect all of the Common Expenses for the Residential Project. There shall be two (2) components of the Budget: (1) the "Century

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**Plaza (Hotel Residential Condos) Budget**” which establishes **“Residential Regular Assessments”** for the maintenance of the Common Area (other than Shared Building Facilities, Building Shared Use Areas and Shared Utility Facilities located thereon) and payment of Common Expenses (other than Common Expenses arising under the Reciprocal Easement Agreement) and (2) the **“Century Plaza (Shared Expenses) Budget”** which establishes **“Shared Regular Assessments”** for the reimbursement by the Association to the Hotel Owner of a portion of the Hotel Owner’s costs and expenses under the Reciprocal Easement Agreement. Regular Assessments shall commence on all Condominiums on the Initial Sale Date. Regular Assessments for fractions of any month involved shall be prorated. Subject to Section 6.5.3, Declarant shall pay its full pro rata share of the Regular Assessments on all unsold Units for which Regular Assessments have commenced. Until such time as all Units have been sold by Declarant, Regular Assessments shall be assessed in accordance with the most recent Budget reviewed by the DRE. Thereafter, the Board shall fix the amount of the Regular Assessment against each Condominium not less than thirty (30) days nor more than ninety (90) days in advance of each Regular Assessment period. Written notice of any change in the amount of any Regular Assessment, Special Assessment, Capital Improvement Assessment or Reconstruction Assessment shall be sent via first-class mail or, in the case of Residential Owners that have elected pursuant to the Bylaws to receive notices from the Association by electronic transmission, by electronic transmission to every Residential Owner subject thereto, not less than thirty (30) nor more than sixty (60) days prior to the increased Assessment becoming due. From time to time the Board may determine that all excess funds in the Operating Fund be retained by the Association and used to reduce the following year’s Regular Assessments. Upon dissolution of the Association incident to the abandonment or termination of the Residential Project, any amounts remaining in any of the Association Maintenance Funds shall be distributed to or for the benefit of the Members in the same proportions as such monies were collected from the Members.

#### 6.5.2 Allocation of Regular Assessments.

(a) *Residential Regular Assessments.* The Century Plaza (Hotel Residential Condos) Budget shall have the following two (2) components which collectively comprise the Residential Regular Assessments: (i) the costs attributable to insurance, electricity (domestic), water (domestic), sewer, custodial supplies, fire suppression system, housekeeping personnel, security personnel, engineering personnel, concierge personnel, doorpersons and reserves for building improvements and mechanical systems (**“Regular Variable Costs”**) and (ii) all other costs set forth in the Century Plaza (Hotel Residential Condos) Budget (the **“Regular Fixed Costs”**). The Regular Variable Costs will be assessed against each Residential Owner and his or her Units based upon the Percentage Share of each Unit. The Regular Fixed Costs will be assessed equally against each Residential Owner and his or her Units based upon the number of Units owned by such Residential Owner. Notwithstanding any other provisions of this Declaration to the contrary, the Association may not recharacterize any Regular Variable Costs or Shared Variable Costs (as defined below) or modify the proration/allocation formulas and/or assumptions from those set forth in the Initial Budgets. Each Residential Owner shall be responsible for all Sub-Metered Expenses relating to such Residential Owner’s Condominium.

(b) *Shared Regular Assessments.* The Century Plaza (Shared Expenses) Budget shall have the following two (2) components which collectively comprise the

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Shared Regular Assessments: (i) the costs attributable to electricity, gas, mechanical systems maintenance, Chilled Water Service (as defined in the Reciprocal Easement Agreement), Enwave – mechanical maintenance, and reserves for building improvements, mechanical systems, interior improvements, lighting and Enwave – mechanical systems (the “**Shared Variable Costs**”) and (ii) all other costs set forth in the Century Plaza (Shared Expenses) Budget (the “**Shared Fixed Costs**”). Shared Variable Costs and Shared Fixed Costs are allocated between the Hotel Owner and the Association as described in the Reciprocal Easement Agreement. The Association’s portion of the Shared Variable Costs will be assessed against each Residential Owner and his or her Units based upon the Percentage Share of each Unit. The Association’s portion of the Shared Fixed Costs will be assessed equally against each Residential Owner and his or her Units based upon the number of Units owned by such Residential Owner.

#### 6.5.3 *Exemptions.*

(a) *Exemption From Assessment Until Unit Put To Use.* Any Owner (including Declarant) of a Unit which has not been completed (*i.e.*, ready for occupancy) shall be exempt from payment of that portion of the Regular Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of the Unit. Any such exemption from the payment of Regular Assessments shall be in effect only until the earlier to occur of (1) the recordation of a notice of completion relating to such Unit, or (2) the occupancy or use of the Unit.

(b) *Exemption From Assessment Until Common Area Improvement Completed.* Notwithstanding any other provisions of this Declaration, until the earlier to occur of (1) the recordation of a notice of completion of an Improvement on the Common Area, or (2) the placement of such Improvement into use, each Residential Owner (including Declarant) shall be exempt from paying that portion of any Regular Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of such Common Area Improvement.

(c) *Exemption From Assessment Until Service Is Initiated.* During the initial stage of occupancy of the Hotel Building, certain services and Association Personnel may be phased-in as the Hotel Building becomes occupied. Accordingly, notwithstanding any other provisions of this Declaration to the contrary, until a particular service is initiated and/or particular Association Personnel are hired, each Residential Owner (including Declarant) shall be exempt from paying that portion of any Regular Assessment which is for the purpose of paying for such service and/or Association Personnel.

(d) *Maintenance Agreement.* Notwithstanding any other provisions of this Declaration or the Bylaws regarding the term and termination of contracts with Declarant for providing services to the Association, Declarant may enter into a written maintenance and/or subsidy agreement with the Association under which Declarant shall pay all or any portion of the operating Common Expenses and perform all or any portion of the Association’s maintenance responsibilities in exchange for a temporary suspension of Regular Assessments. Such maintenance agreement shall extend for a term and shall be on such conditions as are approved by the DRE.

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6.5.4 ***Payment in Installments.*** Each Member shall pay to the Association his or her Regular Assessments in installments at such frequency and in such amounts as established by the Board. If any installment of a Regular Assessment payment is less than the amount assessed and the payment does not specify the Association Maintenance Fund(s) into which it should be deposited, the receipt by the Association from that Member shall be credited in order of priority first to the applicable operating funds, until that portion of the Regular Assessment has been satisfied, and second to the applicable reserve funds.

6.6 **Special Assessments.** Pursuant to this Declaration, the Board may levy a Special Assessment to fund any budgetary shortfall, to restore any funds transferred from the Association's reserve funds. Special Assessments shall also be levied to reimburse the Association for any other charge designated as a Special Assessment in the Restrictions. Notwithstanding the foregoing, the Board shall not impose Special Assessments without first complying with the provisions of California Civil Code Section 5605. For purposes of determining compliance with Section 5605 of the California Civil Code, except as may be required by Applicable Laws, Master Association Assessments that are collected by the Association as agent for the Residential Owners in accordance with this Declaration and the Master Declaration and were approved to the extent required under the Master Declaration and, if applicable, under Section 4.3.5(a) shall not be included when calculating whether the aggregate Special Assessments levied by the Association for a Fiscal Year exceed five percent (5%) of the gross expenses of the Association (as set forth in the Budget) for such Fiscal Year. The foregoing limitation shall be subject to exception for Emergency Assessments.

6.7 **Capital Improvement Assessment.** The Board may levy upon each Residential Owner and his or her Condominium, in any Fiscal Year, a Capital Improvement Assessment or Reconstruction Assessment applicable to that Fiscal Year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement or other such addition upon the Common Area including fixtures and personal property related thereto; *provided, however*, any proposed Capital Improvement Assessments in any Fiscal Year which, if added to the Capital Improvement Assessments already levied during such Fiscal Year, will exceed five percent (5%) of the gross expenses of the Association (as set forth in the Budget) for such Fiscal Year for the Common Area, shall require the vote or written consent of Residential Owners pursuant to an Increase Election. Notwithstanding the foregoing, the Board may levy in any Fiscal Year, a Capital Improvement Assessment applicable to that Fiscal Year which exceeds five percent (5%) of the gross expenses of the Association (as set forth in the Budget) for such Fiscal Year for such Common Area if such increase is necessary to address an Emergency Situation. Except as may be required by Applicable Laws, Master Association Assessments that are collected by the Association as agent for the Residential Owners in accordance with this Declaration and the Master Declaration and were approved to the extent required under the Master Declaration and, if applicable, under Section 4.3.5(a) shall not be included when calculating whether the aggregate Capital Improvement Assessments levied by the Association for a Fiscal Year exceed five percent (5%) of the gross expenses of the Association (as set forth in the Budget) for such Fiscal Year.

6.8 **Remedial Assessments.** Pursuant to this Declaration, the Board may levy a Remedial Assessment against any Condominium to reimburse the Association for costs incurred in bringing such Condominium and/or its Residential Owner into compliance with provisions of

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this Declaration and/or the Association Rules. Remedial Assessments shall be due ten (10) days after the Board gives written notice thereof to the Residential Owner subject thereto.

**6.9 Reimbursement Assessments.** Pursuant to this Declaration, the Board may levy a Reimbursement Assessment against any Condominium to reimburse the Association for materials or services provided by the Association which benefit an individual Condominium, including reimbursement for the costs incurred in repairing damage to Common Area and facilities for which the Residential Owner or Residential Owner's Permittees were responsible. Reimbursement Assessments shall also be levied by the Board against a Residential Owner and his or her Condominium for any other charge designated as a Reimbursement Assessment in the Restrictions. The Board shall provide notice by first class mail or, in the case of Owners that have elected pursuant to the Bylaws to receive notices from the Association by electronic transmission, by electronic transmission to the Owners subject to a Reimbursement Assessment of any decision to levy such Reimbursement Assessment not less than thirty (30) nor more than sixty (60) days prior to the Reimbursement Assessment becoming due.

**6.10 Delinquency.** Any installment of an Assessment provided for in this Declaration shall be delinquent if not paid within fifteen (15) days of the due date as established by the Board. The Board shall be authorized to adopt a system pursuant to which any installment of Regular Assessments, Capital Improvement Assessments, Remedial Assessments, Reimbursement Assessments, Emergency Assessments, Special Assessments or Reconstruction Assessments not paid within thirty (30) days after the due date, plus all reasonable costs of collection (including attorneys' fees) and late charges as provided herein, shall bear interest commencing thirty (30) days from the due date until paid at a rate of interest not to exceed twelve percent (12%) per annum or the maximum rate permitted by law, whichever is less. The Board may also require the delinquent Residential Owner to pay a late charge in accordance with Section 5650(b)(2) of the California Civil Code. Acceptance by the Association of any tender of a partial payment of an installment of an Assessment and all costs and attorneys' fees attributable thereto shall not be deemed to be a waiver of the Association's right to demand and receive full payments thereafter.

**6.11 Creation and Release of Lien.** All sums other than Remedial Assessments assessed in accordance with the provisions of this Declaration shall constitute a lien on the respective Condominium. The lien shall become effective upon recordation by the Board or its authorized agent of a notice ("**Notice of Lien**") securing the payment of any Regular, Special, Capital Improvement, Reimbursement or Reconstruction Assessments or installment thereof, levied by the Association against any Owner as provided in Section 5675 of the California Civil Code. The Notice of Lien shall state (i) the amount of the Assessment or installment, as the case may be, and other authorized charges and interest, including the cost of preparing and recording the Notice of Lien, (ii) the expenses of collection in connection with any delinquent installments, including without limitation reasonable attorneys' fees, (iii) a sufficient description of the Condominium against which the same has been assessed, (iv) the name and address of the Association, (v) the name of the Residential Owner thereof, and (vi) in order for the lien to be enforced by nonjudicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Lien shall be signed by any authorized officer or agent of the Association. The lien shall relate only to the individual Condominium against which the Assessment was levied and not to the Residential Property as a whole. Upon

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payment to the Association of the full amount claimed in the Notice of Lien, or other satisfaction thereof, the Board shall cause to be recorded a notice ("**Notice of Release**") stating the satisfaction and release of the amount claimed. The Board may demand and receive from the applicable Owner a reasonable charge, to be determined by the Board, for the preparation and recordation of the Notice of Release before recording it. Any purchaser or encumbrancer who has acted in good faith and extended value may rely upon the Notice of Release as conclusive evidence of the full satisfaction of the sums stated in the Notice of Lien.

6.12 **Enforcement of Liens.** It shall be the duty of the Board to enforce the collection of any amounts due under this Declaration by any of the alternative means of relief afforded by this Declaration. Subject to California Civil Code Sections 4040 and 5650 through 5740, the lien on a Condominium may be enforced by sale of the Condominium by the Association, the Association's attorneys, any title insurance company authorized to do business in California, or other persons authorized to conduct the sale as a trustee, after failure of the Owner to pay any Regular Assessment, Special Assessment, Capital Improvement Assessment, Reimbursement Assessment, Emergency Assessment or Reconstruction Assessment or any installment thereof, as provided herein. The sale shall be conducted in accordance with the provisions of the California Civil Code, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any manner permitted by law. An action may be brought to foreclose the lien of the Association by the Board, or by any Owner if the Board fails or refuses to act, after the expiration of at least thirty (30) days from the date on which the Notice of Lien was recorded, provided that at least ten (10) days have expired since a copy of the Notice of Lien was mailed to the Owner affected thereby. The Association, through its agents, shall have the power to bid on the Condominium at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, an action may be brought by the Association or the purchaser at the sale in order to secure occupancy of the defaulting Owner's Condominium, and the defaulting Owner shall be required to pay the reasonable rental value for such Condominium during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. Suit to recover a money judgment for unpaid Assessments shall be maintainable without foreclosing or waiving any lien securing the same, but this provision or any institution of suit to recover a money judgment shall not constitute an affirmation of the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this Section may include reasonable attorneys' fees as fixed by the court.

6.13 **Priority of Assessment Lien.** The lien of the Assessments provided for herein, including interest and costs (including attorneys' fees), shall be prior and superior to (a) any declaration of homestead recorded after the recordation of this Declaration, and (b) all other liens, except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any First Mortgage of record made in good faith and for value and recorded prior to the date on which a Notice of Lien against the respective Condominium was recorded. Sale or transfer of any Condominium shall not affect the Assessment lien. However, the sale or transfer of any Condominium pursuant to judicial or nonjudicial foreclosure of a First Mortgage shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Condominium from liens for any Assessments thereafter becoming due. When the beneficiary of a First Mortgage of record or other purchaser of a Condominium obtains title pursuant to a judicial or nonjudicial foreclosure of the First Mortgage, or deed in lieu of foreclosure, such

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Person and his or her successors and assigns, shall not be liable for the share of the Common Expenses or Assessments by the Association chargeable to such Condominium which became due prior to the acquisition of title to such Condominium by such Person.

6.14 **Failure to Fix Assessments.** The omission by the Board to fix the Assessments hereunder before the expiration of any Fiscal Year, for that or the next Fiscal Year, shall not be deemed either a waiver or modification in any respect of the provisions of this Declaration or a release of the Residential Owner from the obligation to pay the Assessments or any installment thereof for that or any subsequent Fiscal Year, but the Assessment fixed for the preceding Fiscal Year shall continue until a new Assessment is fixed.

6.15 **Master Association Assessments.** Notwithstanding anything to the contrary set forth in this Declaration, pursuant to Section 4.2.15, the Association shall have the power to collect all Master Association Assessments levied against the Condominiums concurrently with the collection of the Assessments levied hereunder.

## **ARTICLE VII. USE RESTRICTIONS**

7.1 **Reciprocal Easement Agreement.** Each Residential Owner shall comply with the use restrictions set forth in Article VI of the Reciprocal Easement Agreement, including without limitation the restrictions regarding Occupancy Plans and the rental of Units.

7.2 **Residential Use.** Each Unit shall be used only for residential purposes; *provided, however*, that Residential Owners shall be permitted to maintain a "home office" within a Unit so long as: (a) such use does not interfere with the quiet enjoyment by other Owners; (b) business activities take place solely inside the Unit; (c) such use does not generate or include in-person visits by suppliers, clientele, or more than three (3) employees; (d) such use complies with all laws, regulations and ordinances applicable to the Residential Property, including zoning, health and licensing requirements; (e) such use otherwise complies with this Declaration and is consistent with the residential character of the Residential Project; (f) no signs, logos, billboards, or other advertising materials or devices are displayed in the windows of the Unit, on the exterior of the Hotel Building, or on any Common Area, to advertise the activity; (g) the existence or operation of the business is not apparent or detectable outside the Unit by sight, sound or odor; and (h) the business does not increase the liability or casualty insurance obligation or premium of the Association, the Master Association or the Hotel Owner.

7.3 **Rental of Units.** A Residential Owner may rent his or her Unit provided that the Unit is rented pursuant to a lease or rental agreement which is (a) in writing, (b) for a term of at least one (1) year, and (c) in compliance with Article XIII and all of the provisions of this Declaration.

7.4 **Occupancy Plans.** No Unit shall be used for hotel purposes, transient use (*i.e.*, rental for a term of less than one year, as described in Section 7.3 above), as part of any Occupancy Plan or for similar purposes unless pursuant to a program of operation of the Hotel Owner or the Hotel Operator or its affiliates or designees, or as otherwise agreed to by the Hotel Owner and the Board.



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7.5 **Signs.** Except as provided in California Civil Code Section 4710, no sign, poster, display, billboard or other advertising device of any kind shall be displayed to the public view on any portion of the Residential Property, or shown or displayed from any Unit or Exclusive Use Common Area, without the prior written consent of the Architectural Committee and the Hotel Owner (or the Hotel Operator on behalf of the Hotel Owner); *provided, however*, the restrictions of this Section shall not apply to any sign or notice of customary and reasonable dimension which states that the Unit is for rent or sale, so long as it is consistent with the standards promulgated by the Architectural Committee in accordance with Article IX hereof. Such sign or notice may be placed within a Unit, and may also be placed upon the Common Area with the prior written approval of the Architectural Committee; *provided, however*, the location of such sign or notice on the Common Area shall be within an area specifically established by the Architectural Committee for such purpose. This Section shall not apply to any signs used by Declarant or its agents in connection with the sale of Condominiums or the construction or alteration of the Units or Common Area, traffic and visitor parking signs installed by Declarant, and traffic and parking control signs installed with the consent of the Board. Notwithstanding the foregoing, nothing contained in this Section shall be construed in such manner as to permit the maintenance of any sign which is not in conformance with any ordinance of the City or County, nor prohibit display of signs required to be permitted by Applicable Laws.

7.6 **Antennae.** No radio station or shortwave operators of any kind shall operate from any Unit or any other portion of the Residential Property unless approved by the Board and the Hotel Owner. With the exception of any master antenna maintained by the Association, no exterior radio antenna, "C.B." antenna, television antenna, earth receiving station, satellite dish, other antenna, or any exterior wiring, of any type, shall be erected or maintained anywhere in the Residential Property unless approved by (i) the Architectural Committee or the Board and (ii) the Hotel Owner. Any television antenna, satellite dish or other similar Improvement installed by a Residential Owner shall be installed in accordance with the Architectural Guidelines and only in the specific areas of the Residential Property designated by Declarant or the Board and the Hotel Owner for installation of such devices. Under no circumstances shall any Residential Owner drill through, or install any Improvements upon, the exterior of the Hotel Building and/or any Common Area with respect to the installation or maintenance of any antenna or wiring, unless approved by the Board and the Hotel Owner and, until the later of (i) eleven (11) years after the Initial Sale Date or (ii) the date the last Unit is sold by Declarant, Declarant. Notwithstanding anything herein to the contrary, in the event a master satellite system providing service to the Residential Project has been installed in the Hotel Building, each Residential Owner that desires to obtain satellite television services shall be required to utilize such master system and shall be prohibited from installing an individual antenna serving such Owner's Unit. Each Residential Owner acknowledges that such master antenna system provides adequate access to such satellite services and the airwaves. In any event, any television antenna, satellite dish, or other similar Improvement shall conform to the Project Quality Standard and shall be installed in accordance with the Architectural Guidelines and this Section 7.6. This Section 7.6 is subject to Section 4725 of the California Civil Code and any applicable laws or regulations.

7.7 **Animals.** Subject to Section 4715 of the California Civil Code, no livestock, reptiles, insects, poultry or other animals of any kind shall be raised, bred or kept in any Condominium or elsewhere within the Residential Project except that usual and ordinary domestic dogs, cats, fish, and birds inside bird cages may be kept as household pets within any

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Condominium provided that they are not kept, bred or raised therein for commercial purposes or in unreasonable quantities or sizes. As used in this Declaration, "unreasonable quantities" shall ordinarily mean more than two (2) pets per Condominium; *provided, however*, the Board may determine that a reasonable number in any instance may be more than two (2) pets per Condominium. Pursuant to Section 4.2.14 above, the Board shall have the right to impose additional restrictions on pets provided that such restrictions should not be applied to (i) prohibit a Residential Owner from keeping a particular pet that was otherwise permissible prior to the adoption of such rule (unless, in the reasonable opinion of the Board, the keeping of such pet constitutes a risk to others) or (ii) impact a Residential Owner's existing pet unless such additional restrictions are based on that pet's behavior. No unaccompanied animals of any sort may be kept on Balcony Areas. Animals belonging to Residential Owners, occupants or their licensees, tenants or Permittees within the Residential Project must be either kept within an enclosure or on a leash held by a person capable of controlling the animal. Furthermore, any Residential Owner shall be liable to each and all remaining Residential Owners, their families, guests and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Residential Project by such Residential Owner or by members of his or her Family, his or her tenants or his or her guests. It shall be the duty and responsibility of each such Residential Owner to clean up after such animals which have used any portion of the Residential Project or the Century Plaza Project or on any public street abutting or visible from the Residential Project or the Century Plaza Project. Animals belonging to Residential Owners or invitees of any Residential Owner must be kept within an enclosure or on a leash held by a person capable of controlling the animal when outside the Unit or within the Common Area. Notwithstanding the foregoing, the Board shall have the right to restrict the right to maintain certain aggressive breeds of animals (*e.g.*, pit bulls, presa canario, rottweiler) if such animals pose a risk to others or increase the rate of insurance applicable to the Residential Project and/or the Combined Project.

7.8 **Exterior Fires; Barbecues.** No exterior fires shall be permitted within the Residential Project. Barbecues not a part of built-in kitchen facilities and/or equipment of Units may not be used within the Residential Project unless originally installed in the Hotel Building. Without limiting the foregoing, exterior fires and barbecues may not be used on Balcony Areas. The foregoing limitations shall not apply to fire pits and barbecues installed on the Residential Roof Deck and maintained by the Association.

7.9 **Parties and Events.** Residential Owners shall have the right to plan and hold parties and other events in their Units and those portions of the Common Area provided for the use of the Residential Owners for events (*e.g.*, conference room, barbecue areas); *provided, however*, that any parties or other events with invitees and/or guests in excess of the number of persons set forth in the Association Rules must be coordinated with the Board or the Manager or a person designated by the Board or the Manager. The Residential Owner planning such party or event shall be responsible for all costs associated with the party or event, including, without limitation, any additional valet services, security and Common Area cleanup costs. Such costs shall be deemed a Reimbursement Assessment against the Residential Owner in accordance with the terms of this Declaration.

7.10 **Rights of Handicapped.** Subject to the express terms and provisions of this Declaration, each Owner shall have the right to modify such Owner's Unit and the route over the

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Common Area leading to the front door of such Owner's Unit, at such Owner's sole cost and expense, in order to facilitate access to such Owner's Unit by persons who are blind, visually handicapped, deaf or physically disabled, or to alter conditions which could be hazardous to such persons.

7.11 **Installations.** No structures, equipment or any alterations shall be installed or placed on the exterior facade components of the Unit or within the Common Area or shall penetrate or protrude into or through the unfinished surfaces of the ceilings, walls or floors of the Hotel Building (with the exception of those items installed during the original construction or re-development of the Hotel Building and the initial improvements installed by Declarant within the Residential Property), unless the prior written approvals required under Article IX and any approvals required under the Master Project Documents have been obtained. Nothing shall be done in or to any Condominium that will or may tend to impair the structural integrity of any other Condominium or other improvement in the Residential Property or that would structurally alter any portion of the Hotel Building except as otherwise expressly provided herein. No fixture or equipment shall be installed or used in any Unit that will cause vibrations or noise perceptible to the Occupants of the other Units. In addition to the foregoing, all improvements installed or constructed by a Residential Owner within the Residential Property must be completed in accordance with Applicable Laws. A Residential Owner that acquires fee title to two (2) or more adjoining Units may be permitted to remove the demising wall dividing the two (2) or more Units, so long as the Residential Owner has complied with the requirements and obtained the approvals required under Section 7.21, Article IX and the Master Project Documents. There shall be no alteration, repair or replacement of wall coverings or air conditioning equipment within Units which may diminish the effectiveness of the sound control engineering within the Residential Project or otherwise constitute a nuisance. All air conditioning equipment shall comply with the Acoustic Guidelines.

7.12 **Keys to Units.** Any Manager retained by the Board shall, if required by the Board, retain a key to each Unit or retain a pass key to all Units. No Residential Owner shall install any additional lock in, or alter any lock in, any door to his or her Unit or in any other portion of the Residential Project without the consent of the Board; *provided, however*, the Board may condition the granting of such consent to such Residential Owner upon receipt by the Board of a key to each new or altered lock with respect to which such Residential Owner desires the consent of the Board.

7.13 **Water Beds and Aquariums.** Water beds may not be kept or used within the Residential Project. No aquarium or other container holding thirty (30) or more gallons of water shall be permitted in any Condominium. Each Residential Owner acknowledges that substantial damage to other Units, the Common Area and/or other portions of the Hotel Building may occur as a result of a violation of this restriction.

7.14 **Trash Disposal.** No garbage, trash, rubbish, or other waste material shall be kept or permitted on the Residential Property except in trash containers, or other waste receptacles located in the trash rooms in the Residential Property provided for the use of all Residential Owners. All trash must be bagged or otherwise sealed before it is deposited in any trash rooms located in the Residential Property. No odor shall emanate therefrom so as to be unreasonably unsanitary, unsightly, offensive or detrimental to the Residential Owners in the Residential

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Property. Under no circumstances may explosives, fireworks, or highly flammable materials (such as gasoline, kerosene, oil, oil-based paints) or solvents be disposed of in any trash room or anywhere else in the Residential Property. Any and all costs incurred by the Association for the removal of combustible or toxic materials or other restricted materials from the trash rooms shall be borne by the offending Residential Owner at such Residential Owner's sole cost and expense and assessed to such Residential Owner as a Reimbursement Assessment in accordance with the procedures set forth in this Declaration.

**7.15 Offensive Conduct, Nuisances.** No noxious or offensive activities shall be carried on upon the Residential Property. No horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of a Unit and its contents, shall be placed or used in any such Unit. Noisy or smoky vehicles, large power equipment and large power tools, off-road motor vehicles or items which may unreasonably interfere with television or radio reception of any Owner in the Residential Project, and objects which create or emit loud noises or noxious odors shall not be located, used or placed on any portion of the Residential Property, or exposed to the view of other Residential Owners without the prior written approval of the Architectural Committee. The Board shall have the right to determine in its sole and absolute discretion if any noise, odor, or activity producing such noise or odor constitutes a nuisance. No Residential Owner shall permit or cause anything to be done or kept upon the Residential Property which may increase the rate of insurance on Units or on the Residential Property, or result in the cancellation of such insurance, or which will obstruct or interfere with the rights of other Residential Owners, nor commit or permit any nuisance thereon or violate any Applicable Laws. Each Residential Owner shall comply with all of the requirements of the local or state health authorities and with all other governmental authorities with respect to the occupancy and use of a Unit. Each Residential Owner shall be accountable to the Association and other Residential Owners for the conduct and behavior of such Residential Owner's Permittees. Any damage to the Common Area, personal property of the Association, or property of another Owner, caused by such Permittees, shall be repaired at the sole expense of the Owner of the Unit where such Permittees are residing or visiting.

**7.16 Sound Attenuation.** As in any multi-family dwelling, sound may be audible between Units, particularly where the sound level of the source is sufficiently high and the background sound in an adjacent Unit is very low. Sound may also be audible between Units and the Hotel Project. These sounds may include, but are not limited to, music, voices, animal noises, footsteps, furniture movement, appliance usage, water usage and other sounds. Each Residential Owner shall endeavor to minimize any sound transmission from its Unit, and shall comply with the Association Rules, the Acoustic Guidelines, the Architectural Guidelines and/or the Hotel Owner Rules that are designed to minimize sound transmission. To minimize the sound transmission from a Unit, each Residential Owner (other than Declarant) shall adhere to the requirements set forth below.

7.16.1 No holes or other penetrations shall be made in demising walls without the approvals required under this Declaration and, if required, the Reciprocal Easement Agreement.

7.16.2 No modifications shall be made to any Unit that would result in a reduction in the minimum impact insulation class of the Unit.

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7.16.3 To minimize noise transmission from the Units, each Residential Owner shall install such area rugs and pads within the Unit as are required pursuant to the Acoustic Guidelines. Pursuant to Section 9.4, the prior approval of the Architectural Committee and/or the Board shall be required for the installation, repair or replacement of all flooring to insure compliance with the Acoustical Guidelines. The foregoing shall apply even if the replacement flooring is the same as the original flooring.

7.17 **Window Coverings.** All window coverings (including temporary window coverings) shall be of a neutral color harmonious with and shall not conflict with the color scheme of the Exterior Facade and shall comply with the Project Quality Standard, the Association Rules and the Hotel Owner Rules. No window coverings shall be attached in such a way that will interfere with any window systems. The Exterior Facade may not be altered or pierced unless approved in advance by the Hotel Owner in writing.

7.18 **Structural Alteration and Integrity.** Under no circumstances shall any Residential Owner alter, impair, modify, or penetrate any structural Improvement within the Combined Project for any reason whatsoever. No interior or exterior structural changes of any kind shall be constructed, erected or made within the Residential Project other than those approved by the Architectural Committee and the Hotel Owner. No partition walls shall be installed, altered or removed without the approval of the Architectural Committee. Nothing shall be hung from any ceiling, bearing wall or partition walls bounding or within any Unit without the approval of the Architectural Committee; *provided, however*, the hanging from ceilings, bearing walls and partition walls bounding or within Units of light fixtures, plants, paintings, mirrors and other customary fixtures and decorating items shall be permitted so long as the same do not impair the structural integrity or acoustical soundness of any such ceiling, bearing wall or partition wall. Nothing shall be installed, kept or maintained within any Unit which might damage or impair the structural integrity of the Combined Project. Each Residential Owner, by acceptance of a deed to his or her Unit recognizes that, due to the integrated nature of the Residential Property and the Hotel Property, such Residential Owner's ability to alter the exterior of his or her Unit is limited and no Residential Owner may make any alterations that affect the Hotel Property without the prior written approval of the Hotel Owner.

7.19 **Balcony Areas.** Balcony Areas shall be Exclusive Use Common Area appurtenant to a particular Unit. Each Residential Owner shall use and maintain his or her Balcony Areas in accordance with this Declaration, the Reciprocal Easement Agreement, the Association Rules, the Architectural Guidelines, the Hotel Owner Rules, the Project Quality Standard and all Applicable Laws (including Fire Department requirements). Balcony Areas may not be used as additional storage areas for a Unit. In order to maintain the Project Quality Standard, any items placed on Balcony Areas must comply with the Architectural Guidelines, the Association Rules and the Hotel Owner Rules.

7.20 **Move-in Hours.** Residential Owners shall only be allowed to move into or out of their Unit between the hours of 8:00 A.M. and 6:00 P.M., Monday through Friday, and, subject to the prior written approval of the Board, during such hours on Saturday. Prior to moving, such Residential Owner must give the Hotel Owner at least fifteen (15) business days prior written notice of such move in order to reserve the Shared Service Elevators for use by the Residential Owner. There is no guarantee that the Shared Service Elevators will be available on the date a

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Residential Owner desires to move into or out of his or her Unit and in the event the Shared Service Elevators are not available on such date, the applicable Residential Owner must coordinate with the Hotel Owner to select a moving date when the Shared Service Elevators are available. Any use of the Loading Dock (as defined in the Master Declaration) by a Residential Owner shall require the prior approval of the Master Association and such Residential Owner shall give the Master Association at least fifteen (15) business days prior written notice of such use of the Loading Dock. Moving shall only occur in the Shared Service Elevators of the Combined Project. The Association and/or the Hotel Owner shall have the right to require that any moving company provide adequate proof of insurance prior to entering the Combined Project and each Residential Owner shall be responsible to provide such proof to the Association at least thirty (30) days prior to the scheduled move. In addition, the Association may require that Residential Owners post a deposit in the amount set forth in the Association Rules to cover any damage to the Combined Project that may occur during moving.

7.21 **Right to Combine Units.** A Residential Owner (herein, the "**Subject Owner**") shall have the right to cause two (2) or more adjoining Units owned by such Subject Owner (herein, the "**Subject Units**") to be physically combined subject to the provisions of this Section and those of Article IX hereof entitled "*Architectural Control*"; *provided, however*, for the Subject Units to be eligible for physical combination they must either not be encumbered by Mortgages or they must be encumbered by identical Mortgages (and the Mortgagees of such Mortgages must all consent in writing thereto); and, in addition, after completion of the work of construction to cause the Subject Units to be physically combined (which may include total or partial removal of party walls, doors and other Common Area improvements), the Subject Owner, as the Owner of the Unit of which the Subject Units are a part, shall have and possess the sum total voting rights allocable thereto, shall pay all Assessments allocable thereto (*i.e.*, if two (2) Units are combined, the Owner thereof shall have two (2) Class A votes and shall be responsible for the Assessments relating to both Units). Any hallways or other Common Areas that exclusively serve the combined Units shall be deemed to become Exclusive Use Common Area appurtenant to the combined Units. Said Condominiums shall be subject to the restriction that the same shall not be conveyed, sold or hypothecated separate and apart from one another. Combination of the Subject Units shall not, in any event, require amendment of the Condominium Plan. No Residential Owner shall have the right to combine Units until the Board, the Architectural Committee and the Hotel Owner have received and separately approved all of the following:

7.21.1 *Architectural Plans.* Architectural plans of the proposed combination of the Units which have received all applicable governmental approvals;

7.21.2 *Structural Support.* A certificate stating that any portion of the Units or Common Area to be affected by the proposed combination is not required for the structural support of any other Unit or any part of the Combined Project. Said certificate shall be given by a structural engineer licensed in the State of California and approved by the Board and the Hotel Owner;

7.21.3 *Permits.* All building and other governmental permits required for the construction of the proposed combination;

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7.21.4 *Indemnity.* The agreement of the Owner to indemnify, defend, and hold the Association and the Hotel Owner harmless as a result of the work to be performed to combine the Units; and

7.21.5 *Other Documentation.* Any other documentation which is required pursuant to Article IX or which the Board, the Architectural Committee or the Hotel Owner may otherwise require.

Notwithstanding any other provision herein, the Board, the Architectural Committee or the Hotel Owner may rescind its approval of the proposed Unit combination if the work therefor is not performed in accordance with the documentation previously submitted to the Board, the Architectural Committee or the Hotel Owner, or the Board, the Architectural Committee or the Hotel Owner reasonably concludes that the structural integrity of the Hotel Building has been impaired. In such event, the Unit shall, at the Subject Owner's sole expense, be made to conform with the documentation submitted to the Board, the Architectural Committee and the Hotel Owner, or be restored to its prior condition. Any proposed combination of Units which in any way would result in the removal of any structural support for any Unit or Units or any other portion of the Combined Project is strictly prohibited.

Notwithstanding any provision of this Section to the contrary, Declarant shall have the absolute right to combine Units at any time in accordance with this Section 7.21; *provided* that Declarant shall not be subject to the requirements of Sections 7.21.1 through 7.21.5 or any of the provisions of Article IX hereof.

7.22 **Right of First Refusal.** Any Residential Owner (other than Declarant) who desires to sell his or her Condominium shall be subject to the provisions set forth in this Section 7.22.

7.22.1 The Association is hereby granted a right of first refusal to purchase any Condominium offered for sale by a Residential Owner (other than Declarant). After a Residential Owner enters into any agreement with any purchaser for the sale or transfer of such Residential Owner's Condominium, the Residential Owner shall deliver to the Association a copy of such agreement (the "**Offer Agreement**").

7.22.2 The Association shall have fourteen (14) calendar days after delivery of the Offer Agreement to exercise its right of first refusal to acquire the Condominium for the same purchase price as set forth in the Offer Agreement. The Association shall exercise the right of first refusal by delivering to the Residential Owner a notice that it has elected to exercise its right of first refusal within such fourteen (14) day period (the "**Exercise Notice**"). The failure of the Association to deliver an Exercise Notice within such fourteen (14) day period shall be deemed to be a waiver of the Association's right of first refusal. If the Association declines (or is deemed to decline) to exercise its right of first refusal within the fourteen (14) day period, then Residential Owner shall be entitled to sell the Condominium to the purchaser.

7.22.3 If the Exercise Notice is delivered to the Residential Owner by the Association, the Residential Owner shall thereupon be bound to sell to the Association and the Association shall thereupon be bound to purchase the Condominium for the same purchase price

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as set forth in the Offer Agreement and the Association and the Residential Owner shall enter into a separate purchase agreement consistent therewith (the "**Association Purchase Agreement**"). The closing of the purchase shall occur on the date specified in the Association Purchase Agreement or such other date as may be mutually agreed by the Association and such Residential Owner; *provided, however*, in no event shall the Association be required to close such purchase less than ninety (90) days after the delivery of the Exercise Notice.

7.22.4 In the event any Residential Owner shall attempt to sell to a person or entity described in this **Section 7.22** without notifying the Association as herein provided, such sale or transfer shall be null and void. The failure or refusal of the Association to exercise its right of first refusal in one instance shall not constitute a waiver of such right to purchase the Condominium when the Residential Owner receives any subsequent bona fide offer from a prospective purchaser, or receives an offer containing different terms and conditions.

7.22.5 The Association shall only exercise its right of first refusal in a fair and nondiscriminatory manner and in compliance with all applicable laws and regulations, including, without limitation, the Federal Fair Housing Act (42 U.S.C. §§3601 *et seq.*) and the California Unruh Civil Rights Act (Civil Code §§51 *et seq.*).

7.23 **Exemptions.** Any provision of this Declaration to the contrary notwithstanding, no provision of this Declaration (including the provisions of this Article entitled "**Use Restrictions**" and those of the Article hereof entitled "**Architectural Control**") shall ever be construed as preventing Declarant and its representatives from engaging in all forms of construction and sales and marketing activities within the Residential Project or as limiting Declarant in doing anything it considers appropriate to complete construction of or to improve the Residential Project (including, but not limited to, completion, improving, combining or separating Units whether or not owned by it, and installing hard floor covering in Units whether or not owned by it) or to sell and/or rent the condominiums thereof at any time in a manner consistent with Applicable Laws.

7.24 **Limitation on Resales.** Each Residential Owner who purchases a Unit from Declarant, by acceptance of a deed to such Residential Owner's Unit, represents and warrants that upon the Close of Escrow for such Unit, such Residential Owner intends to own such Unit for a period of no less than one (1) year following the Close of Escrow for such Unit (the "**Ownership Period**"). Each Residential Owner acknowledges that unless and until such Residential Owner has owned his or her Unit for the Ownership Period, such Residential Owner may not sell his or her Unit without Declarant's written approval, which approval may be withheld in Declarant's sole discretion. This Section shall not limit the ability of any Residential Owner to lease such Residential Owner's Unit pursuant to **Article XIII**.

7.25 **Compliance with Applicable Laws.** Nothing shall be done or kept in any Unit or in the Common Area that might increase the rate of, or cause the cancellation of, insurance for the Hotel Building or any portion thereof. Neither the Association nor any Residential Owner shall permit anything to be done or kept in the Common Area or its Unit that violates any Applicable Laws, including any Applicable Laws pertaining to the use or storage of any hazardous, contaminated or toxic materials.



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**ARTICLE VIII.**  
**MAINTENANCE**

8.1 **Maintenance.** Unless the context otherwise requires, as used in this Article VIII, maintenance, maintain or maintaining means the operation, inspection, maintenance, repair, restoration and replacement of the areas and facilities designated for maintenance under this Article VIII. To the extent repair, restoration and replacement is required as a result of damage or destruction under Article XII, the repair and restoration shall be governed by the provisions of Article XII.

8.2 **Maintenance Obligations of Residential Owners.**

8.2.1 *Residential Owners' Responsibilities.* Each Residential Owner shall perform the maintenance described below in accordance with the requirements and schedules set forth in the Residential Owner Maintenance Manual:

(a) Maintain all portions of such Owner's Unit, including, without limitation, the interior surfaces of the Unit;

(b) Except to the extent the Hotel Owner or the Association is required by the Reciprocal Easement Agreement to do so, and except to the extent the Master Association or the Association is required by the Master Declaration to do so, maintain any Utility Facilities exclusively servicing such Owner's Unit. Notwithstanding any other provision herein, each Owner shall be responsible for all maintenance and repair of any internal or external telephone wiring (including, without limitation, such wiring utilized for DSL, T-1, modem, or other electronic communication), wherever located, which is designed to serve only such Owner's Unit, and shall be entitled to reasonable access over the Common Area for such purposes, subject to reasonable limitations imposed by the Association and subject to the Reciprocal Easement Agreement. It shall further be the duty of each Owner to pay when due all charges for any utility service which is separately metered to such Owner's Unit;

(c) Clean the interior of all windows and doors enclosing such Owner's Unit and paint or refinish the interior of any entry doors;

(d) Maintain all appliances within the Unit, whether built-in or free standing;

(e) Clean and maintain such Owner's assigned Balcony Areas in compliance with the Project Quality Standard. Notwithstanding the foregoing, certain Units in the Residential Project are duplex Units (Units 1201-1221 and 1401-1421) and there are two (2) levels of Balcony Areas adjacent to such duplex Units. Certain Balcony Areas located on the upper level of a duplex Unit (*i.e.*, the Balcony Areas above the staircases leading to the second (2<sup>nd</sup>) floor of such duplex Unit) are not accessible by Unit Owners and the Association will be responsible for cleaning and maintaining such Balcony Areas and the sliders leading to such Balcony Areas. The Owner of a duplex Unit will be responsible for cleaning and maintaining the Balcony Areas located on the lower level of the Unit, the accessible Balcony Areas located on the upper level of the Unit and the sliders leading to such Balcony Areas. The Hotel Owner shall be responsible for the periodic repair, resurfacing, sealing, caulking, replacement or

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painting of each Unit's assigned Balcony Areas and the sliders leading to such Balcony Areas, so long as the need for such painting, repair, resurfacing or replacement is not caused by the willful or negligent acts of the Unit's Owner or such Owner's Permittees. Residential Owners shall not be permitted to paint or make repairs to Balcony Areas or to the sliders leading to such Balcony Areas. All maintenance of Balcony Areas shall be subject to the terms and conditions of the Reciprocal Easement Agreement;

(f) Clean and maintain such Owner's Assigned Storage Space in compliance with the Project Quality Standard. The Hotel Owner shall be responsible for the periodic structural repair, resurfacing, sealing, caulking, replacement or painting of such Owner's Assigned Storage Space, so long as the need for such painting, repair or replacement is not caused by the willful or negligent acts of the Owner or such Owner's Permittees; and

(g) Maintain the locks of such Owner's Assigned Storage Spaces (if any).

8.2.2 *Standards of Maintenance.* All such maintenance shall be performed in such a manner as shall be deemed necessary in the judgment of the Board to preserve the attractive appearance thereof, protect the value thereof and in compliance with all requirements of the Residential Owner Maintenance Manual, the Maintenance Obligations and, if applicable, the Project Quality Standard.

8.2.3 *Compliance with Owner Maintenance Manual.* Each Residential Owner shall comply with the obligations and schedules set forth in the Residential Owner Maintenance Manual and shall provide a copy of the Residential Owner Maintenance Manual and any documents describing the Maintenance Obligations to any successor purchaser of such Residential Owner's Condominium.

8.3 **Owners Failure to Maintain.** If a Residential Owner fails to maintain the areas and items as provided above or make repairs thereto in such manner as shall be deemed necessary in the judgment of the Association to protect the value of the Common Area and the other Units and/or the safety of the other Occupants of the Residential Project, the Association shall give written notice to such Residential Owner, stating with particularity the work or maintenance or repair which the Association finds to be required and requesting that the same be carried out within a period of thirty (30) days from the giving of such notice. If the Residential Owner fails to carry out such maintenance or repair within the period specified by the notice, the Association shall cause such work to be completed and shall assess the cost thereof to such Residential Owner as a Reimbursement Assessment in accordance with the procedures set forth in this Declaration.

#### 8.4 **Maintenance Obligations of Association.**

8.4.1 *Association's Maintenance Responsibilities.* Except for the areas and items the Residential Owners are required to maintain as described in Section 8.2 or the Hotel Owner is required to maintain as set forth in the Reciprocal Easement Agreement, the Association shall be responsible for maintaining the Residential Utility Facilities and all Common Area and for performing any maintenance obligations imposed on the Association by

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the Reciprocal Easement Agreement in accordance with the maintenance schedules and obligations set forth in the Common Area Maintenance Program. In addition to the foregoing, the Association shall maintain the entry doors to an Owner's Unit but not the interior surface thereof.

#### 8.4.2 *Manner of Maintenance.*

(a) *Project Quality Standard and Common Area Maintenance Program.* All maintenance work undertaken by the Association shall be done in a first class and workmanlike manner in accordance with good maintenance practices, in compliance with all Applicable Laws, the Maintenance Obligations and this Declaration and shall, to the extent required by the Reciprocal Easement Agreement or this Declaration, conform to the Project Quality Standard and all requirements set forth in the Common Area Maintenance Program. Any such work shall be done to the extent reasonably practicable to minimize any noise, vibration, particulates and dust infiltration or other disturbances which would unreasonably disturb Residential Owners or Occupants of other portions of the Combined Project.

(b) *Insufficient Funds to Maintain Project Quality Standard.* If the cost of performing required maintenance to the Project Quality Standard exceeds the sum of (i) all reserve account funds designated for the repair or replacement of the Improvements requiring such maintenance to conform to the Project Quality Standard plus (ii) available contingency funds (if any), the Association shall levy a Special Assessment against all Residential Owners up to the maximum amount permitted by law and this Declaration to be levied without approval of the Residential Owners. If the sum of (a) all reserve account funds designated for the repair or replacement of the Improvements requiring maintenance in conformance with the Project Quality Standard, plus (b) available contingency funds (if any), plus (c) the maximum Special Assessment that may be levied against all Residential Owners, without their approval is less than the cost of conforming required maintenance to the Project Quality Standard, the Association shall solicit the Residential Owners' approval of a Special Assessment in the amount of the deficiency.

(c) *Effect of Association's Failure to Maintain Project Quality Standard.* **IF THE ASSOCIATION FAILS TO MAINTAIN TO THE PROJECT QUALITY STANDARD THOSE IMPROVEMENTS THAT THE RECIPROCAL EASEMENT AGREEMENT OBLIGATES THE ASSOCIATION TO MAINTAIN TO THAT STANDARD EITHER BECAUSE THE RESIDENTIAL OWNERS DO NOT APPROVE A SPECIAL ASSESSMENT IN AN AMOUNT SUFFICIENT TO CONFORM REQUIRED MAINTENANCE TO THE PROJECT QUALITY STANDARD OR FOR ANY OTHER REASON, THE MANAGEMENT AGREEMENT WITH THE ASSOCIATION'S INITIAL MANAGER ALLOWS THE MANAGER TO TERMINATE THE MANAGEMENT AGREEMENT IN ACCORDANCE WITH ITS TERMS.**

8.4.3 *Duty to Protect Against Mechanics' Liens.* In fulfilling its maintenance obligations as provided in this Declaration, the Association or Residential Owner, as applicable, shall promptly pay all costs, expenses, liabilities and liens arising out of or in any way connected with contracts for any service, labor or materials provided or supplied to the Residential Project for the construction of any improvements authorized or undertaken by the Association or

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Residential Owner. Neither the Association nor any Residential Owner shall cause or permit any mechanic's lien to be filed against the Residential Property for labor or materials alleged to have been furnished or delivered to the Residential Project or any Condominium by the Association or Residential Owner. If any Residential Owner or the Association causes a lien to be filed, such party shall: (i) immediately cause the lien to be discharged within ten (10) days after notice to such responsible party; (ii) indemnify, protect, defend and hold harmless the other Residential Owners and/or the Association, as applicable, from any loss, damage, liability, expense or claims whatsoever by reason of any lien which may be filed against the Residential Property or the other Residential Owners or such Residential Owner's Condominium for such work, services or materials performed or supplied by any architect, engineer or contractor with whom the Association has contracted or any other Person acting directly or indirectly by, through or under such architect, engineer or contractor supplying services, labor, materials or equipment; and (iii) pay all expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defending against the foregoing claims and enforcing this indemnity by another Residential Owner and/or the Association, as applicable, prior to the defense thereof by the Association.

8.4.4 *Willful or Grossly Negligent Acts or Omissions of Owners.* Notwithstanding the obligations of the Association to maintain the Common Area and other areas required to be maintained by the Association under the Residential Documents and Master Project Documents, if maintenance of such areas or facilities is made necessary by the willful or grossly negligent act or omission of a Residential Owner or its Permittees, the costs shall be levied as a Reimbursement Assessment against the responsible Residential Owner or the Association may bring an action at law to collect such amounts from the Residential Owner; *provided, however*, that if the entry door to a Unit is required to be repaired or restored due to the negligence or misconduct of a Residential Owner or the Residential Owner's Permittees, then such costs shall be levied as a Reimbursement Assessment against the responsible Residential Owner or the Association may bring an action at law to collect such amounts from the Residential Owner.

8.5 **Maintenance Log.** The Association shall maintain a comprehensive maintenance log which details all maintenance actions and compliance with the maintenance provisions set forth in this Declaration (including, without limitation, the Maintenance Obligations and the Project Quality Standard).

8.6 **Annual Inspection.**

8.6.1 *Duty to Inspect.* It shall be the duty of the Board to have the Common Area (excluding Exclusive Use Common Area) inspected at least once each year.

8.6.2 *Purpose of Inspection.* The purpose of the inspection shall be to (i) determine whether the Common Area is being maintained adequately in accordance with the standards of maintenance established in Section 8.4 hereof, (ii) identify the condition of the Common Area and any Improvements thereon including the existence of any hazards or defects, and the need to perform additional maintenance, refurbishment, replacement, or repair, and (iii) recommend preventive actions which may be taken to reduce potential maintenance costs to be incurred in the future.

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8.6.3 *Scope of Inspection.* All of the Common Area and the Improvements thereon including, but not limited to, the exterior and structural integrity of all structures, gates, walls, walkways, irrigation systems, landscaping, and drainage devices shall be inspected.

8.6.4 *Experts and Consultants.* The Board may employ such experts and consultants as are necessary to perform the inspection and make the report required by this Section.

8.6.5 *Report to Residential Owners.* The Board shall have prepared a report of the results of the inspection of the Common Area required by this Section. The report shall be furnished to Residential Owners within the time set forth for furnishing Residential Owners with the Budget. The report shall include, at a minimum, the following:

(a) a description of the condition of the Common Area, including a list of items inspected, and the status of maintenance, repair and need for replacement of all such items;

(b) a description of all maintenance, repair and replacement planned for the ensuing fiscal year and included in the Budget;

(c) if any maintenance, repair or replacement is to be deferred, the reason for such deferral;

(d) a summary of all reports of inspections performed by any experts or consultants employed by the Board to perform inspections;

(e) a report of the status of compliance with the maintenance, replacement and repair needs set forth in the inspection report for preceding years; and

(f) such other matters as the Board deems appropriate.

## **ARTICLE IX.**

### **ARCHITECTURAL CONTROL**

#### **9.1 Architectural Committee.**

9.1.1 *Establishment of Committee.* The Architectural Committee is hereby created, consisting of three (3) individuals, for the purpose of establishing and maintaining specific architectural control for the Residential Project. Except as otherwise provided herein, under no circumstances shall any landscaping or Improvements be constructed or installed upon the Residential Project without the prior consent of the Architectural Committee in accordance with this Article.

9.1.2 *Initial Members.* Prior to the first anniversary of the issuance of a Public Report for the Residential Project, members of the Architectural Committee shall be designated by Declarant. After the first anniversary of the issuance of a Public Report for the Residential Project and prior to the Transition Date, two (2) of the members of the Architectural Committee shall be designated by Declarant and one (1) of the members of the Architectural Committee

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shall be designated by the Board. All of the rights, powers and duties of the Architectural Committee as set forth in this Article are hereby delegated to the Architectural Committee established hereby. Such delegation may not be revoked except by Declarant until the later to occur of (i) five (5) years after the issuance of a Public Report for the Residential Project, or (ii) sale by Declarant of ninety percent (90%) of the Units (the "**Transition Date**").

9.1.3 *Appointment, Removal and Resignation.* After the Transition Date, the right to appoint and remove all members of the Architectural Committee at any time, shall be and is hereby vested solely in the Board; *provided, however*, no initial member of the Architectural Committee, nor any successor appointed by Declarant for an initial member who dies or resigns, may be removed except by Declarant prior to the expiration of such member's term of office pursuant to Section 9.1.2 above. Any member of the Architectural Committee may at any time resign from the Architectural Committee by giving written notice thereof to Declarant, if, pursuant to this subparagraph, Declarant has the right to appoint a successor to such member, or, if Declarant does not have the right, to the Board.

9.1.4 *Vacancies.* Except as otherwise provided in Sections 9.1.2 and 9.1.3, after the Transition Date, all vacancies, however caused, on the Architectural Committee shall be filled by vote of a majority of the Board. A vacancy shall be deemed to exist in case of the death, resignation or removal of any member of the Architectural Committee. Failure of the Board to fill any vacancy in the Architectural Committee shall not prevent: (i) the running of the ninety (90) day automatic approval period specified in Section 9.7.7; or (ii) action by the Architectural Committee on any matter to the extent that a majority thereof each join in and consent thereto.

9.2 **Approval and Conformity of Plans.** Except as provided herein, no Improvement of any kind or any alteration to an existing Improvement shall be made, constructed, installed or maintained within the Residential Project unless the plans and specifications therefor (i) are in compliance with the Architectural Guidelines (defined below) and this Article and (ii) have been submitted to and approved by the Architectural Committee. Only minor repairs or minor alterations, subject to Section 9.2.1 below, of existing Improvements or the replacement of appliances are exempt from this requirement.

9.2.1 *Minor Alterations.* Notwithstanding Section 9.2 above, no decorating or cosmetic work for any Unit, which includes alterations that are limited in scope (such as bathroom and kitchen modernization where no changes are being made to plumbing systems) or involve purely decorative work (such as floor scraping, painting and wallpapering), may commence until a "**Unit Decorating Agreement**," (the "**Unit Decorating Agreement**") has been approved by the Architectural Committee. The form of the Unit Decorating Agreement shall be on file with the Architectural Committee and is subject to modification by the Board at any time and from time to time. The Unit Decorating Agreement, in conjunction with the Architectural Guidelines and this Declaration, shall include requirements relating to insurance coverage, indemnification and other requirements for decorating or cosmetic work as set forth by the Board. In the event of any conflict between the Unit Decorating Agreement and the Architectural Guidelines, the Unit Decorating Agreement shall prevail.

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9.2.2 **Major Alterations.** No alterations of a Unit, other than decorating or cosmetic work as set forth in Section 9.2.1 above, shall commence until an "Alteration and Construction Agreement" (the "Alteration Agreement") has been approved by the Architectural Committee. The form of the Alteration Agreement shall be on file with the Architectural Committee and is subject to modification by the Board at any time. The Alteration Agreement, in conjunction with the Architectural Guidelines and this Declaration, shall include requirements relating to insurance coverage, indemnification and other requirements as set forth by the Board. In the event of any conflict between the Alteration Agreement and the Architectural Guidelines, the Alteration Agreement shall prevail.

9.3 **Architectural Guidelines.** The Board may, from time to time, adopt and promulgate architectural guidelines (the "Architectural Guidelines") to be administered through the Architectural Committee. Prior to the Transition Date, the Architectural Guidelines shall not be amended, modified, changed or waived in any manner without the prior written approval of Declarant. In the event of any conflict between the Architectural Guidelines and this Declaration, this Declaration shall prevail.

9.4 **Acoustic Guidelines.** The Architectural Committee and/or the Association shall have the right to take noise considerations into account in reviewing and approving any submittals, and shall have the further right to assemble acoustic guidelines and restrictions to be adhered to by the Owners (the "Acoustic Guidelines"), including, without limitation, guidelines and restrictions with respect to the selection and installation of flooring and underlayment materials in any Units (including restrictions on where certain flooring materials may be installed) and/or the attachment to ceilings, walls or cabinets of stereo equipment and/or speakers. In connection with any application to the Architectural Committee and/or the Board regarding flooring, the Owner shall submit construction specifications clearly indicating the type of flooring and the method and materials of installation. The specifications must clearly identify all materials, their composition and thickness. The Architectural Committee and/or the Board shall have the right to request that any Owner desiring to install any improvements or equipment possible or likely to generate elevated sound levels submit the results of a noise study prepared by a qualified consultant reasonably acceptable to the Architectural Committee or the Board, as applicable, and/or submit a written description to the Architectural Committee of the measures that the Owner intends to take to ensure that said equipment or instrument shall not disturb the Owners, lessees and other occupants of the Residential Project. It shall remain the responsibility of Owners to abide by the sound and noise reduction requirements set forth in this Declaration, the Acoustic Guidelines, the Association Rules and/or otherwise established by the Association and/or the Architectural Committee.

9.5 **Meetings and Compensation.** The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. The Architectural Committee may from time to time, by resolution unanimously adopted in writing, designate an Architectural Committee representative (who may be a licensed architect or other professional consultant retained by the Architectural Committee) to review documents and materials submitted to the Architectural Committee and recommend action to be taken by the Architectural Committee or to take any other action or perform any other duties for and on behalf of the Architectural Committee. In the absence of such designation to act for and on behalf of the Architectural Committee, the vote or written consent of any two (2) members, at a meeting or otherwise, shall

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constitute the act of the Architectural Committee. The Architectural Committee shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. Members of the Architectural Committee shall not receive any compensation for services rendered.

9.6 **Duties.** It shall be the duty of the Architectural Committee to:

9.6.1 reasonably consider and act in good faith and consistent with all Applicable Laws upon any and all proposals or plans submitted to it pursuant to the terms hereof;

9.6.2 ensure that any construction on the Residential Property by anyone other than Declarant conform with the Architectural Guidelines, the Acoustic Guidelines, the Master Project Documents, the Reciprocal Easement Agreement, the Hotel Owner Rules and, if applicable, the Project Quality Standard;

9.6.3 ensure that any construction on the Residential Property by anyone other than Declarant conform with the Unit Decorating Agreement or Alteration Agreement, as required;

9.6.4 to perform other duties as may be delegated to it by the Board from time to time; and

9.6.5 to carry out all other duties imposed upon it by this Declaration.

The Architectural Committee, in its own name or on behalf of the Association, may exercise all available legal and equitable remedies to prevent or remove any unauthorized and unapproved construction or Improvements on the Residential Property or any portion thereof.

9.7 **Operation of Committee.** The Architectural Committee shall function as follows:

9.7.1 The Architectural Committee may require the submission to it of any or all of the following documents and such additional documents which it determines to be reasonably appropriate to the activity for which consent is requested:

(a) a written description of the proposed Improvement or alteration to an existing Improvement;

(b) plans and specifications;

(c) copies of all permits and all submittals with respect to same;

(d) schematics;

(e) an acoustical report, if applicable;

(f) elevations; and

(g) such other materials or information reasonably requested by the Architectural Committee.



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9.7.2 All submissions to the Architectural Committee shall:

- (a) show the name and address of the party submitting the same;
- (b) be in triplicate;
- (c) be deemed made when actually received by the Architectural Committee; and
- (d) state in writing the specific matters for which approval is sought.

9.7.3 The Architectural Committee, before giving its approval, may require that changes be made to comply with such requirements as the Architectural Committee may, in its absolute discretion, impose as to structural features of any proposed Improvement, the types of materials used, or other features or characteristics thereof not expressly covered by any provisions of this instrument. Notwithstanding the foregoing, no approval by the Architectural Committee shall be deemed to excuse the applicant from complying with the applicable requirements of the City or any other governmental body with jurisdiction over the Residential Project, including, without limitation, any prior planning approvals and building code requirements. Any and all costs associated with compliance with applicable City or other governmental body requirements shall be borne solely by the Residential Owner. In connection therewith, as a condition of approval, the City or such other governmental body may require, as part of any submittal by a Residential Owner, confirmation that the requested modification or Improvement has been considered by and approved by the Architectural Committee. Neither the Architectural Committee nor the Association shall be liable for any loss, cost, or damage resulting from any delay caused by the Residential Owner's inability to submit an application to the City or any other governmental body prior to the time approval is obtained from the Architectural Committee.

9.7.4 Every Residential Owner, by acceptance of a deed to his or her Condominium, acknowledges, recognizes and understands that, notwithstanding any other provision herein, no approval by the Architectural Committee shall be deemed to excuse the applicant from complying with all restrictions herein, in the Association Rules, or with sound building and safety practices, with respect to preservation of the structural integrity of any building in which the Residential Project is a part or to which the Residential Project is connected.

9.7.5 The Architectural Committee, before giving its approval, may impose conditions (including, without limitation, requiring a Residential Owner to post adequate security, in the form of a bond, insurance or otherwise, protecting the Association or other Residential Owners) or require changes to be made which in its discretion are required to ensure that the proposed Improvement will not detract from the appearance of the Common Area, or otherwise create any condition unreasonably disadvantageous to other Residential Owners or detrimental to the Residential Project as a whole. Notwithstanding the provisions of Section 9.7.7, before delivering its notice of approval, the Architectural Committee shall be entitled to a

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reimbursement for all costs incurred by the Architectural Committee, including, without limitation, any costs associated with architect fees, inspections or copying.

9.7.6 The Architectural Committee shall retain one (1) of the three (3) sets of submitted documents. In the event the Architectural Committee approves or is deemed to approve the activity for which consent is required, the Architectural Committee shall endorse its consent on all three (3) copies and two (2) sets of such documents shall be mailed by the Architectural Committee, postage prepaid, to the address specified by the submitting party unless such party shall elect to accept delivery thereon in person or by agent so authorized in writing.

9.7.7 If the Architectural Committee fails to mail its certificate with regard to any material or matter submitted to it hereunder, within ninety (90) days after submission to it, it shall be conclusively presumed that the Architectural Committee has approved the specific matters as to which approval was sought in the submission. It shall thereupon be the duty of the members of the Architectural Committee, forthwith upon the request of the submitting party, to sign and acknowledge a certificate evidencing such approval. Notwithstanding the foregoing, the approved specific matters shall be subject to the Architectural Guidelines.

9.7.8 As a condition precedent to its consideration of or action upon any material or matter submitted to it hereunder, the Architectural Committee shall be entitled to receive a reasonable sum fixed by it on a non-discriminatory basis from time to time for each set of plans, specifications, drawings or other material so submitted. Notwithstanding the provisions of Section 9.7.7, until the requisite sum shall have been paid to it as provided herein, any material delivered to the Architectural Committee shall not be considered to have been submitted to it for the purposes of this Declaration.

9.7.9 All actions of the Architectural Committee shall be noted in the minutes of the Board.

9.7.10 No certificate of the Architectural Committee shall be recorded by the Architectural Committee or any member thereof, but the same may be recorded by the party submitting the material concerning which the certificate was made.

9.7.11 All action by the Architectural Committee authorized in this Declaration, except as otherwise provided herein, shall be within its sole discretion.

9.7.12 The provisions of this Article shall not apply with respect to the initial construction by Declarant of Improvements within the Residential Project.

9.8 **Access to Property.** Each member of the Architectural Committee, or any other agent or employee of the Board, and the Hotel Owner, or any agent or employee of the Hotel Owner, shall at all reasonable hours have the right of access to any part of the Residential Property, and to any structures being built thereon, for the purpose of inspection relative to compliance with this Declaration and the Reciprocal Easement Agreement and entry onto any part of the Residential Property in accordance herewith shall not be deemed a trespass.

9.9 **Waiver.** The approval or disapproval by the Architectural Committee of any plans, specifications, drawings, heights, or any other matters submitted for approval or consent

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shall not be deemed to be a waiver by the Architectural Committee of its right to subsequently approve, disapprove, object or consent to any of the features or elements embodied therein when the same features or elements are embodied in other plans, specifications, drawings or other matters submitted to the Architectural Committee.

9.10 **Liability.** Each Residential Owner shall be solely responsible for any violation of this Declaration, the Architectural Guidelines, a Unit Decorating Agreement, an Alteration Agreement or any applicable instrument, law or regulation, caused by an Improvement made by such Residential Owner even though same is approved or deemed approved by the Architectural Committee. Plans and specifications shall be approved by the Architectural Committee as to style, design, appearance and location, and are not approved for engineering design or for compliance with zoning and building ordinances, this Declaration, the Reciprocal Easement Agreement, the Master Project Documents, easements, deed restrictions and other rights and obligations affecting the Residential Property. By approving such plans and specifications neither the Architectural Committee, the members thereof, the Association, the Members, the Board nor Declarant assumes liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. The Architectural Committee shall have the right to require, as a condition of approval, that a Residential Owner provide indemnification on terms and conditions satisfactory to the Architectural Committee.

9.11 **Amendments.** Notwithstanding the provisions of Article XVI, no amendment, verification or rescission of this Article may be made, nor shall Declarant, or any successor of Declarant, be prohibited from completing the construction of the Residential Project prior to the conveyance by Declarant, or its successor, of the last Unit without the (i) written consent of Declarant, and the (ii) recording of such consent in the Official Records.

9.12 **Required Approvals.**

9.12.1 *Hotel Owner Approval.* Hotel Owner approval is required for any Residential Work. As set forth in the Reciprocal Easement Agreement, "**Residential Work**" means any Project improvements, alterations or construction of any type or kind by the Association or Residential Owners which may, in the reasonable discretion of the Hotel Owner: (i) affect the function or operation of the Building Shared Use Areas, the Shared Building Facilities or the Hotel Property, or any part thereof, or the Hotel Utility Facilities (as defined in the Reciprocal Easement Agreement) or Hotel Elevators (as defined in the Reciprocal Easement Agreement); (ii) penetrate any of the finished surfaces of the ceilings or walls, or unfinished surfaces of any floors, of any portion of the Hotel Building; (iii) affect sound transmissions, resonances or reverberations to any adjoining Building Lot or Condominium, including, without limitation, the replacement, modification or penetration of any flooring or floor covering; (iv) alter the exterior appearance of the Building Lots and/or the Hotel Building or any part thereof (other than work of refurbishment and/or restoration performed by the Hotel Owner); (v) affect or alter the water proofing for any portion of the Hotel Building; (vi) alter or affect any of the Utility Facilities; or (vii) alter or change the insurance coverage required to be maintained by the Hotel Owner or materially increase the costs of such insurance. In addition to obtaining approval of the Hotel Owner, the approval by the Association shall also be required for any Residential Work and any other changes, alterations or modifications by a Residential Owner of any portion of the Common Area.

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9.12.2 **Master Association Approval.** Master Association approval is required for any Major Construction Work (as defined in the Master Declaration) in accordance with Article VI of the Master Declaration.

9.13 **Submission to Hotel Owner.** If the Architectural Committee approves plans and specifications submitted to it for approval pursuant to this Article IX and the proposed improvement also requires approval of the Hotel Owner pursuant to the Reciprocal Easement Agreement or pursuant to this Declaration, the Architectural Committee shall submit the approved plans and specifications to the Hotel Owner for its review; *provided, however*, that the Residential Owner requesting approval of the proposed improvements shall be responsible for complying with the conditions imposed by the Hotel Owner pursuant to its approval of the proposed improvements and for paying all fees associated with such review by the Hotel Owner.

9.14 **Applicable Laws, Project Approvals and Master Architectural Guidelines.** If there is any conflict between the requirements or actions of the Architectural Committee and any Applicable Laws, the Project Approvals or the Master Architectural Guidelines, the Applicable Laws, the Project Approvals or the Master Architectural Guidelines, to the extent that such Applicable Laws, the Project Approvals or Master Architectural Guidelines are more restrictive, shall control, and the Architectural Committee shall modify its requirements or actions to conform to the Applicable Laws, the Project Approvals or Master Architectural Guidelines. The application to and the review and approval by the Architectural Committee of any submittals by a Residential Owner shall in no event be deemed to be satisfaction or compliance with any building permit process or other Applicable Laws or the architectural review and other requirements of the Project Approvals, the Reciprocal Easement Agreement or the Master Declaration (hereinafter collectively referred to as "**Additional Requirements**") the responsibility for which shall lie solely with the Residential Owner; *provided, however*, if the Additional Requirements are less restrictive, then the provisions of the Residential Documents shall nonetheless apply.

## ARTICLE X. **DECLARANT'S RIGHTS AND RESERVATIONS**

10.1 **General.** Subject to Applicable Laws, nothing in the Restrictions shall limit, and no Residential Owner or the Association shall do anything to interfere with, the right of Declarant to subdivide or resubdivide any portion of the Residential Project, record any tract map(s) or condominium plan(s) for all or a portion of the Residential Project owned by Declarant or the Association, or to complete Improvements to and on the Common Area or any portion of the Residential Project owned solely or partially by Declarant, or to alter the foregoing or its construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Residential Project so long as Declarant owns any portion of the Residential Project. The rights of Declarant hereunder shall include, but shall not be limited to, the right to install and maintain such structures, displays, signs, billboards, flags and sales offices anywhere on the Residential Project as may be necessary for the conduct of its business of completing the work and disposing of the Units by sale, resale, lease or otherwise. Each Residential Owner, by accepting a deed to a Unit, hereby acknowledges that the activities of Declarant may temporarily or permanently impair the view of such Residential Owner and may constitute an inconvenience or nuisance to the Residential Owners, and hereby consents to

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such impairment, inconvenience or nuisance. This Declaration shall not limit the right of Declarant at any time prior to acquisition of title to a Unit in the Residential Project by a purchaser from Declarant to establish on that Unit additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposition of the Residential Project. Declarant may use any Units owned by Declarant as model home complexes or real estate sales or leasing offices. Declarant need not seek or obtain Architectural Committee approval of any Improvement constructed or placed on any portion of the Residential Project by Declarant. The rights of Declarant hereunder and elsewhere in the Restrictions may be assigned by Declarant to any successor in interest to any portion of Declarant's interest in any portion of the Residential Property by a written assignment. Notwithstanding any other provision of this Declaration, the prior written approval of Declarant, as developer of the Residential Project, will be required before any amendment to this Article shall be effective. Declarant and its prospective purchasers of Lots or Units shall be entitled to the nonexclusive use of the Common Area and any recreational facilities thereon, without further cost for access, ingress, egress, use or enjoyment, in order to show the Residential Property to its prospective purchasers and to dispose of the Residential Property as provided herein. Declarant, its successors and tenants, shall also be entitled to the nonexclusive use of any portions of the Residential Property which comprise private walkways for the purpose of ingress, egress and accommodating pedestrian traffic to and from the Residential Property. The Association shall provide Declarant with all notices and other documents to which a beneficiary is entitled pursuant to this Declaration, provided that Declarant shall be provided such notices and other documents by the Association without making written request therefor.

**10.2 Right of Declarant to Redesign Residential Project.**

10.2.1 *General.* There is no guarantee that the Residential Project will be developed as originally planned. Subject to the restrictions and limitations set forth in this Section, Declarant reserves the right, in its sole discretion, from time to time, within a period of ten (10) years from the date of the recording of this Declaration, or at any time or at different times within such ten (10) year period, to redesign the Residential Project or any portion or aspect thereof, including, but not limited to, any Improvement constructed or proposed to be constructed on the Residential Property and, in connection with such redesign, to effect the following changes in the Residential Project:

- (a) Alter the vertical and/or horizontal boundaries, of any Improvement.
- (b) Alter the size, shape, configuration, floor plan and/or location of any Units.
- (c) Create new Units or eliminate or combine existing Units.
- (d) Change the configuration of any Improvement.
- (e) Adjust the configuration of the Common Area.

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(f) Effect deviations from any Condominium Plan which result during the actual construction of the Improvement.

10.2.2 *General Restrictions on Redesign.* The rights of Declarant set forth in Section 10.2.1 above are hereby made subject to the following restrictions and limitations:

(a) with the exception of the revisions authorized in Section 10.2.1 above, the redesign of any portion of the Residential Project shall in no event physically modify, affect, or change any Units, which as of the date of such redesign, are the subject of an agreement of sale or are owned by an Owner other than Declarant, unless the purchaser or Owner of such a Unit shall consent to such redesign in writing; and

(b) the redesign of any portion of the Residential Project shall conform to the Project Quality Standard to the extent the Project Quality Standard is applicable to such portion of the Residential Project.

10.2.3 *Amendment to Condominium Plan.* In the event that a redesign of all or any portion of the Residential Project in accordance with the provisions of this Article affects any Units in the Residential Project so as to necessitate the preparation of an amendment to the Condominium Plan, including any amendment necessary to cause the Condominium Plan to comply with the Improvements as actually built, Declarant shall prepare or cause to be prepared, execute, acknowledge, file or cause to be filed for approval and record or cause to be recorded an amendment to the Condominium Plan. Any such amendment to the Condominium Plan which would have a material adverse effect on a Unit or any Exclusive Use Common Area shall require the consent of the Owner of such Unit and/or the Owner with rights to such Exclusive Use Common Area, which consent shall not be unreasonably withheld, conditioned or delayed. Any such amendment to the Condominium Plan which would have a material adverse effect on the Common Area shall require the consent of the Association, which consent shall not be unreasonably withheld, conditioned or delayed. The amendment to the Condominium Plan shall, when recorded, have the effect of (a) relocating the Common Area and any Exclusive Use Common Area therein and each Unit to the extent set forth on the amendment to the Condominium Plan, (b) vesting in each Residential Owner (including Declarant with respect to any unsold Units) an undivided interest in the Common Element as depicted on the amendment to the Condominium Plan, (c) divesting each Residential Owner (except Declarant) of all right, title and interest to any Unit, other than each Owner's Unit, depicted on the amendment to the Condominium Plan, (d) vesting in each holder of a Mortgage an undivided interest (to the extent of the interest in the Common Element owned by the Owner of the Unit) which is the subject of such Mortgage in the Common Area as depicted on the amendment to the Condominium Plan and (e) divesting each holder of a Mortgage of all right, title and interest to each Condominium (other than the Owner's Condominium which is the subject of such Mortgage) depicted on the amendment to the Condominium Plan. The adjustment of any Mortgage in accordance with the provisions of this Section shall not affect the priority of any such Mortgage with respect to any other matters affecting title to the Condominium which is the subject thereof.

10.2.4 *Amendment to Budget.* In the event that an amendment to the Condominium Plan made in accordance with the provisions of this Article affects the Square Footage of any Units in the Residential Project, or in the event in the event two (2) or more Units

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are combined pursuant to Section 7.21, and hallways or other Common Areas which are deemed to be Exclusive Use Common Area pursuant thereto are included in the Square Footage of the combined Units, Declarant may prepare or cause to be prepared (i) an amendment to the Budget to adjust the variable components of the Budget to reflect such revised Square Footage and (ii) an amendment to Exhibit A to this Declaration to reflect the revised Percentage Shares of the affected Units so long as the Assessments levied against unaffected Units would not be increased by such amendment.

10.2.5 *Power of Attorney.* Each Owner, by accepting a deed to a Unit, shall be deemed to have constituted and irrevocably appointed, for himself and each of his or her Mortgagees, optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, for a period of ten (10) years from the date of the recording of this Declaration, Declarant as his or her attorney-in-fact and thereby to have conveyed a power of attorney coupled with an interest ("Power of Attorney") to Declarant as his or her attorney-in-fact to effect the redesign of all or any portion of the Residential Project in accordance with the limitations and requirements set forth in this Article, and further:

(a) To prepare or cause to be prepared, execute, acknowledge, file or cause to be filed for approval and file or record or cause to be filed or recorded any map or record of survey required or permitted by the provisions of the Subdivision Map Act of the State of California as in effect on the date of recordation of this Declaration and as thereafter amended and any ordinances, rules and regulations of any governmental entities and authorities having jurisdiction over the Residential Project as in effect on the date of recordation of this Declaration and as thereafter enacted or amended, or which may be required or permitted by any title insurer, and in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute, acknowledge and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations;

(b) To prepare or cause to be prepared, execute, and acknowledge and file or cause to be filed for approval and record or cause to be recorded any amendment to a Condominium Plan, including any amendment necessary to cause such Condominium Plan to comply with the Residential Project as actually built, which may be required or permitted by the laws of the City, the County or the State of California as in effect on the date of recordation of this Declaration and as thereafter enacted or amended and any ordinances, rules and regulations of any governmental entities and authorities having jurisdiction over the Residential Project as in effect on the date of recordation of this Declaration and as thereafter enacted or amended, or which may be required or permitted by any title insurer, and in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations;

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(c) To prepare or cause to be prepared, execute, acknowledge and file or cause to be filed for approval, any application for zoning or setback changes or variance or special use permits or any other permits and/or reports required or permitted by the laws of the City, the County, or the State of California as in effect on the date of recordation of this Declaration and as thereafter enacted or amended and any ordinances, rules and regulations of any governmental entities and authorities having jurisdiction over the Residential Project as in effect on the date of recordation of this Declaration and thereafter enacted or amended and, in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations;

(d) To make application for any property reports or public reports or amendments thereto or exceptions from the requirements therefor required or permitted in order to comply with federal and state statutes, rules and regulations relating to the sale, lease, transfer or other disposition of subdivided lands to the public and, in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any agreements and bonds securing the performance of the obligations contained therein;

(e) To deliver any public reports or property reports, or amendments thereto, obtain receipts and offer and administer rescission rights required by law;

(f) To prepare or cause to be prepared, execute, acknowledge, file or cause to be filed for approval, any registration or any application for any permit, approval, exemption, ruling or entitlement required or permitted pursuant to any law or regulation in effect as of the date of the recording of this Declaration and as hereafter enacted or amended by any federal, state and local governmental entities and authorities, and in connection therewith to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by such governmental body and by any such laws and regulations; to appear before any such governmental bodies and to execute and deliver any agreement and bonds and post deposits securing the performance of any such conditions and obligations; and do all other things now or hereafter permitted or required by any such governmental body and any such laws and regulations;

(g) To prepare or cause to be prepared, execute, acknowledge and record or cause to be recorded any deeds, waivers, releases, reconveyances or other documentation which may be permitted or required to clear title to any Units, whether constructed or to be constructed, in the Residential Project; and

(h) To do any and all things necessary or desirable under the circumstances to effect and accomplish the purposes of this Article.

10.2.6 *Indemnification of Owners on Exercise of Power of Attorney.* Declarant shall indemnify and hold each Residential Owner harmless from all liabilities, including



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reasonable attorneys' fees, which are incurred as a direct result of the execution by Declarant of any improvement agreements or bonds, or both, in connection with the exercise by Declarant of the Power of Attorney set forth in Section 10.2.5 hereof.

10.2.7 *Mortgage Interests to Take Subject to Power of Attorney.* The acceptance or creation of any Mortgage whether voluntary or involuntary, and whether or not created in good faith and whether or not given for value, shall be deemed to be accepted and/or created subject to each of the terms and conditions of the Power of Attorney described in Section 10.2.5 hereof.

10.2.8 *Power of Attorney Binding on Successors in Interest.* Each and all Residential Owners and each of their respective Mortgagees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, shall be deemed to have expressly agreed, assented and consented to each and all of the provisions of this Declaration and shall be deemed to have constituted and irrevocably appointed Declarant as his or her attorney in fact to carry out the powers described in Section 10.2.5 hereof, and such Power of Attorney shall be deemed to continue to be coupled with an interest.

10.3 **Assignment of Residential Storage Spaces.** Declarant shall have the exclusive right to initially assign all Residential Storage Spaces to Owners of Units and to collect additional consideration therefor. Except as otherwise provided in this Declaration, the Master Declaration and/or the Reciprocal Easement Agreement, so long as Declarant owns any portion of the Residential Property, no Residential Storage Spaces may be assigned to an individual Owner or Unit by any person or entity other than Declarant.

10.4 **Assignment of Declarant Rights.** The rights of Declarant under this Declaration may be assigned to any successor(s) by an express written assignment, including, without limitation, a deed, option or lease. This Declaration shall not be construed to limit the right of Declarant at any time prior to such an assignment to establish additional licenses, reservations and rights-of-way to itself, to utility companies, to the City, to the County, to the State, or to others as may be reasonably necessary to the proper development and disposal of property owned by Declarant.

10.5 **Access to Books.** Declarant may, at any reasonable time and upon reasonable notice to the Board or Manager, cause an audit or inspection to be made of the books and financial records of the Association.

10.6 **Protection of Declarant.** The prior written approval of Declarant, as developer of the Residential Property, shall be required for any amendment to this Declaration which would affect, impair or diminish the rights, duties, or obligations of Declarant hereunder, or would otherwise affect, impair, or diminish Declarant's ability to complete the Residential Property or sell or lease Condominiums therein in accordance with this Declaration. Notwithstanding any other provisions of the Restrictions, until such time as Declarant no longer owns any Condominiums in the Residential Property, the following actions, before being undertaken by the Association, shall first be approved in writing by Declarant:

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10.6.1 Any amendment or action requiring the approval of First Mortgagees pursuant to this Declaration, including without limitation all amendments and actions specified in Section 15.6;

10.6.2 The levy of a Capital Improvement Assessment for the construction of new facilities not constructed on the Common Area by Declarant; or

10.6.3 Subject to Section 6.4 regarding limitations on Regular Assessment increases, any significant reduction of Association maintenance or other services.

## **ARTICLE XI. INSURANCE**

11.1 **Association's Insurance Obligations.** The Association shall obtain and keep in force at all times the following policies of insurance:

11.1.1 *Commercial General Liability Insurance.*

(a) One (1) or more commercial general liability insurance ("**CGL**") policies providing coverage at least as broad as a current Insurance Services Office ("**ISO**") CG 0001 commercial general liability insurance occurrence policy form or its equivalent, with such limits as may be considered acceptable to FNMA (but in no event less than Three Million Dollars (\$3,000,000) per occurrence, Three Million Dollars (\$3,000,000) annual general aggregate (with a "per project" endorsement causing the annual general aggregate limit to apply separately to the Residential Project) and Three Million Dollars (\$3,000,000) annual products-completed operations aggregate), with a self-insured retention or deductible of not more than Two Hundred Fifty Thousand Dollars (\$250,000) per occurrence, providing coverage for bodily injury, property damage, personal and advertising injury, and fire damage legal liability. The required limits may be provided by any combination of primary and umbrella or follow form excess liability insurance policies.

(b) In addition to the foregoing CGL policies, one (1) or more umbrella or excess liability insurance policies providing coverage at least as broad as the CGL policies required herein with limits of not less than Fifty Million Dollars (\$50,000,000) (measured in Constant Dollars, updated annually upon the renewal of such policy) per occurrence and in the annual aggregate. All such umbrella or excess liability insurance policies shall also provide excess auto liability coverage over the policy required in Section 11.1.2.

(c) In any event, and notwithstanding any other provision herein, the Association shall maintain, at a minimum, insurance as required by Section 5805 of the California Civil Code, as same may be amended from time to time.

(d) The foregoing liability policies, to the extent commercially reasonably available, (i) shall include full separation of insureds and shall not contain any insured versus insured limitation or exclusion; (ii) shall include as named insureds the Association and Declarant; and (iii) shall name the Residential Owners as additional insureds (by endorsement(s) or policy provision(s) reasonably acceptable to such parties) on the policies with respect to liability arising out of the Common Area.

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11.1.2 *Commercial Auto Liability.* Commercial auto liability insurance with a combined single limit of One Million Dollars (\$1,000,000) (measured in Constant Dollars, updated annually upon the renewal of such policy) per accident, and including non-owned liability coverage.

11.1.3 *Workers' Compensation and Employer's Liability Insurance.* Worker's compensation insurance having limits not less than those required by state statute and federal statute, if applicable, and covering all persons employed by the Association in the conduct of its operations on the Residential Project (including the "other states" and volunteers extensions, if applicable), together with employer's liability insurance coverage in the amount of at least One Million Dollars (\$1,000,000) bodily injury by accident (each accident), One Million Dollars (\$1,000,000) bodily injury by disease (policy limit) and One Million Dollars (\$1,000,000) bodily injury by disease (each employee), in each case, measured in Constant Dollars, updated annually upon the renewal of such policy. The Association shall require any independent contractor who performs any service for the Association to carry statutory worker's compensation and employer's liability insurance in the amount of at least One Million Dollars (\$1,000,000) bodily injury by accident (each accident), One Million Dollars (\$1,000,000) bodily injury by disease (policy limit) and One Million Dollars (\$1,000,000) bodily injury by disease (each employee), in each case, measured in Constant Dollars, updated annually at the beginning of each Fiscal Year.

11.1.4 *Property Insurance.* A policy of insurance insuring against loss by fire and the risks covered by an ISO special form policy or equivalent covering any non-structural Improvements (*i.e.*, non-structural walls, ceilings, floor coverings, fixtures and finishes) located within the Common Area, and any personal property owned or maintained by the Association, in an amount equal to the full replacement cost thereof, as determined annually, without deduction for depreciation, with such reasonable deductible amounts as may be customary from time to time in other First-Class Projects (as defined in the Master Declaration). The Association shall coordinate its property insurance coverage with the Master Association and the Hotel Owner to ensure that, to the extent reasonably possible, the property insurance obtained by the Association does not duplicate the property insurance maintained by the Master Association or the Hotel Owner.

11.1.5 *Fidelity Bonds.* Fidelity bond coverage, naming the Association as an obligee, for any person or entity handling funds of the Association, including, but not limited to, officers, directors, trustees, volunteers, employees and agents of the Association and employees of any Manager, whether or not such Persons are compensated for their services, in an amount not less than the greater of (a) the estimated maximum of funds, including reserve funds, in the custody of the Association or the Manager, as the case may be, at any given time during the term of each bond and (b) the sum of three (3) months' Regular Assessments plus any reserve funds. The fidelity bond shall include, at minimum, the following insuring agreements: employee dishonesty, depositor's forgery/alteration, computer fraud, messenger inside premises and messenger outside premises.

11.1.6 *Directors and Officers.* Directors and officers liability coverage for individual liability of officers and directors of the Association for liability arising out of acts or omissions in that capacity and covering employment practices liability. The limit of such coverage shall be not less than Five Million Dollars (\$5,000,000) each claim and annual

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aggregate (measured in Constant Dollars, updated annually upon the renewal of such policy) and shall at all times meet or exceed the minimum requirements of Section 5800 of the California Civil Code.

11.1.7 *Insurance Required by Federal Agencies.* Such casualty, flood and liability insurance and fidelity bond coverage for the Residential Project (including all Common Area and all Improvements located thereon) meeting the insurance and fidelity bond requirements for projects similar to the Residential Project established by any Federal Agencies, except to the extent such coverage is not commercially reasonably available or has been waived in writing by such Federal Agencies, as applicable.

11.1.8 *Builder's Risk.* At all times during which structural construction, repairs or alterations are being made by the Association with respect to the Improvements located on the Common Area, or any portion thereof, the estimated cost of which will exceed \$200,000 (measured in Constant Dollars, updated annually at the beginning of each Fiscal Year): (i) the insurance provided for in Section 11.1.5 of the Master Declaration, written in a so-called builder's risk completed value form (A) on a non-reporting basis, (B) against all risks insured against pursuant to Section 11.1.5 of the Master Declaration, (ii) including permission to occupy, and (iii) with an agreed amount endorsement or clause waiving any co-insurance requirements.

11.1.9 *Other Insurance.* Such other insurance, as necessary and/or appropriate, including, but not limited to, errors and omissions, plate glass insurance, malicious mischief, liquor liability, vandalism, and insurance against such other risks as shall customarily be covered with respect to condominium projects similar in construction, location and use.

11.1.10 *Beneficiaries.* Such insurance shall be maintained for the benefit of the Association, the Residential Owners, and, as their interests may appear, the Mortgagees under Mortgages encumbering the Residential Project, subject, however, to loss payment requirements as set forth herein.

11.2 **Residential Owners' Insurance Obligations.** Each Residential Owner shall provide insurance on his or her personal property and upon all other property and Improvements within or constituting part of his or her Unit (including, without limitation, any property of others under the care, custody, or control of such Residential Owner) and to obtain a waiver of subrogation as to the Master Association, the Hotel Owner, the Hotel Operator and the Association (and to the extent commercially reasonably available, Declarant) in such insurance. Each Residential Owner shall obtain liability insurance to cover his or her individual liability for injury or damage to persons or property occurring inside his or her individual Unit or elsewhere upon the Residential Project. Liability insurance maintained by Residential Owners shall have limits of liability as required by the Association or such Residential Owners' lenders from time to time, whichever is greater. Duplicate copies of such policies maintained by Residential Owners shall be deposited with the Board upon request. Each Owner must first seek and use commercially reasonable efforts to obtain recovery from his or her own property insurance prior to instituting any claim for loss of, loss of use of or damage to property or Improvements located within, or constituting part of, such Owner's Unit (including loss caused by another Residential Owner(s), the Master Association, the Hotel Owner, the Hotel Operator or the Association) against any insurance maintained by or on behalf of the Master Association, the Hotel Owner,

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the Hotel Operator, the Association or another Residential Owner. After resolution of a Residential Owner's claim against his or her own insurance, any subsequent claim by such Residential Owner for such loss against insurance maintained by or on behalf of the Master Association, the Hotel Owner, the Hotel Operator, the Association or another Residential Owner shall be reduced by the amount of such Residential Owner's recovery from such Residential Owner's property insurance. In the event that such Residential Owner has failed to maintain his or her own property insurance as required by this Section 11.2, then the amount of any claim by Residential Owner for such loss against insurance maintained by or on behalf of the Master Association, the Hotel Owner, the Hotel Operator, the Association or another Residential Owner shall be reduced by the amount that such Residential Owner would have recovered from such Residential Owner's property insurance if such Residential Owner had in fact maintained such insurance.

11.3 **Required Waivers**. The Association and each Residential Owner shall ensure that any policy of property insurance relating to the Residential Project, the Common Area, any Unit or any Improvements, shall provide, if commercially reasonably available, for waiver of the following rights, to the extent that the respective insurers would have the rights without such waivers:

11.3.1 any defense based upon coinsurance;

11.3.2 any right of setoff, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Master Association, the Association, the Hotel Owner, the Hotel Operator or any Residential Owner;

11.3.3 any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Master Association, the Association, the Hotel Owner, the Hotel Operator or any Residential Owner or any tenant of any Residential Owner, or arising from any act, neglect, or omission of any insured or the respective agents, contractors and employees of any insured;

11.3.4 any right of the insurer to repair, rebuild or replace, and, if the Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement cost of the Improvements insured;

11.3.5 notice of the assignment of any Residential Owner of his or her interest in the insurance by virtue of a conveyance of a Unit; and

11.3.6 any right to require any assignment of any Mortgage to the insurer.

11.4 **Annual Insurance Review**. The Board shall review the insurance carried by or on behalf of the Association at least annually (or as otherwise required by law), for the purpose of determining the amount of the coverages and limits of insurance maintained by the Association pursuant to this Declaration or, if applicable, the amount of the coverages and limits of insurance maintained by the Master Association on behalf of the Association pursuant to the Master Declaration. If economically feasible, the Board shall obtain a current appraisal of the full replacement cost of the Improvements on the Residential Project without deduction for depreciation, from a qualified independent insurance appraiser, prior to each such annual review.

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11.5 **Modification of Insurance Requirements.** The Board shall review in good faith and modify as it deems reasonable the requirements set forth in this Article XI at least once every two (2) years. Pursuant to Section 11.9 of the Master Declaration, the Master Board shall also have the power to recommend adjustments and modifications to the insurance requirements applicable to the Residential Project and the Board and each Residential Owner shall use reasonable good faith efforts to comply with such adjustments and modifications.

**ARTICLE XII.**  
**DESTRUCTION OF IMPROVEMENTS AND CONDEMNATION**

12.1 **Repair and Restoration of Residential Property.** Except as otherwise provided in this Declaration, in the event of any destruction of any portion of the Residential Property, the repair or replacement of which is the responsibility of the Association, it shall be the duty of the Association to restore and repair the same to its former condition, as promptly as practical unless the Master Association has elected not to restore the Century Plaza Project pursuant to Section 12.3.1 of the Master Declaration. The proceeds of any insurance maintained pursuant to the Master Declaration and Article XI hereof for reconstruction or repair of the Residential Property shall be used for such purpose, unless otherwise provided herein. The Board shall be authorized to have prepared the necessary documents to effect such reconstruction as promptly as practical. The Residential Property shall be reconstructed or rebuilt substantially in accordance with the Condominium Plan, the tract map for Tract No. 71688 and the original Building Plans, unless changes recommended by the Architectural Committee have been approved in writing by (i) sixty-seven percent (67%) of the Residential Owners, and fifty-one percent (51%) of Institutional Mortgagees (based on one (1) vote for each Unit in the Residential Project encumbered by a First Mortgage held by such Institutional Mortgagee(s)) and (ii) the Hotel Owner. All repair, restoration, reconstruction or replacement work undertaken by the Association shall be performed in accordance with the terms of the Master Declaration (including Article XII thereof) and the Reciprocal Easement Agreement and shall be completed as expeditiously as reasonably possible under the circumstances, subject to delays that are beyond the reasonable control of the Association, and shall be pursued to completion. If the amount available from the proceeds of such insurance policies for such restoration and repair is at least eighty-five percent (85%) of the estimated cost of restoration and repair of the Residential Property, a Reconstruction Assessment shall be levied by the Board to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose. If the amount available from the proceeds of such insurance policies for such restoration and repair is less than eighty-five percent (85%) of the estimated cost of restoration and repair of the Residential Property, the Board may levy a Reconstruction Assessment and proceed with the restoration and repair only if the following condition (the "**Condition to Reconstruction**") has first been satisfied: the levy of a Reconstruction Assessment to pay the costs of restoration and repair of the Residential Property is approved by the affirmative vote or written consent of sixty-seven percent (67%) of the Residential Owners, and by the written consent of fifty-one percent (51%) of the Institutional Mortgagees (based on one (1) vote for each Unit in the Residential Project encumbered by a First Mortgage). If the Condition to Reconstruction does not occur within six (6) months following a destruction for which insurance proceeds available for restoration and repair are less than eighty-five percent (85%) of the estimated cost of restoration and repair of the Residential Property, it shall be conclusively presumed that the Residential Owners have determined not to proceed with

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restoration and repair and not to allow the Board to levy a Reconstruction Assessment, in which case the Residential Owners may proceed as provided in Section 14.1.

12.2 **Interior Damage.** With the exception of any casualty or damage insured against by the Association pursuant to Section 11.1.4 of this Declaration or by the Master Association or the Hotel Operator pursuant to the Master Declaration, restoration and repair of any damage to the interior of any individual Unit, including, without limitation, all fixtures, cabinets and Improvements therein, together with restoration and repair of all interior paint, wall coverings and floor coverings, shall be made by and at the individual expense of the Owner of the Unit so damaged. In the event of a determination to rebuild the Residential Property after partial or total destruction, as provided in this Article, such interior repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approved by the Architectural Committee and, if applicable, the Hotel Owner as provided herein and in accordance with the terms of the Master Declaration (including Article XII thereof) and the Reciprocal Easement Agreement.

12.3 **Notice to Residential Owners and Listed Mortgagees.** The Board, immediately upon having knowledge of any damage or destruction affecting a material portion of the Common Area shall promptly notify all Residential Owners and First Mortgagees who have filed a written request for such notice with the Board. The Board, immediately upon having knowledge of any damage or destruction affecting a Unit, shall promptly notify any beneficiary of a Mortgage encumbering such Unit who has filed a written request for such notice with the Board.

12.4 **Condemnation.** If the Residential Property is subject to condemnation or eminent domain proceedings, the provisions of Section 12.8 of the Master Declaration shall apply and any proceeds from the condemnation awarded to the Association shall be distributed to the Residential Owners and their Mortgagees as their respective interests may appear.

### ARTICLE XIII. **LEASING**

13.1 **Lease.** Declarant may rent any Unit owned by Declarant provided same is rented pursuant to a written lease or rental agreement for a term of not less than one (1) year. An Owner (other than Declarant) may rent his or her Unit provided that the Unit is rented pursuant to a written lease or rental agreement, for a term of not less than one (1) year, subject to the provisions of this Declaration, and the following additional requirements applicable to leasing of Units by Residential Owners other than Declarant:

13.1.1 **Lease Addendum.** All such leases shall contain an addendum to the lease (the "**Lease Addendum**") which shall be signed by the lessee and returned to the Association (with a copy provided to the Hotel Owner) prior to the lessee's occupancy of the Unit. The Lease Addendum shall contain, at a minimum, the following terms:

(a) Lessee's acknowledgment and agreement to comply with all provisions of this Declaration, the Reciprocal Easement Agreement and the other Residential

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Documents, the Master Project Documents, the Association Rules and the Hotel Owner Rules and that any failure to do so shall constitute a default under the lease;

(b) There shall be no right of assignment or sublease;

(c) Lessee shall carry "renter's insurance" with a limit of no less than One Million Dollars (\$1,000,000.00) (measured in Constant Dollars, updated annually at the beginning of each Fiscal Year) per occurrence and shall be required to provide proof thereof to the Association;

(d) Lessee's understanding and agreement to pay rents to the Association following receipt of written notice that the Residential Owner (*i.e.*, the landlord under the lease) has become delinquent in the payment of Assessments to the Association; and

(e) Lessee's acknowledgment of the Association's right to initiate an unlawful detainer action against the lessee in the event the lessee fails to abide by the terms of this Declaration, the Reciprocal Easement Agreement and the other Residential Documents, the Master Project Documents, the Association Rules and/or the Hotel Owner Rules.

13.1.2 **Indemnity.** Each Residential Owner who leases his or her Unit agrees to indemnify, defend, and hold harmless the Association, the Hotel Owner, the Hotel Operator, their respective officers, directors, employees, invitees, and other Owners from any liability arising from the acts and omissions of his or her lessee. Every Residential Owner who chooses to lease his or her Unit agrees that the leasing Residential Owner shall be held fully liable for all acts or omissions, whether negligent or non-negligent, of his or her lessee.

13.1.3 **Common Area.** Upon the leasing of his or her Unit, each Residential Owner automatically assigns to the lessee all of the Residential Owner's right to use the Common Area (including any Exclusive Use Common Area appurtenant to such Unit) and any facilities thereon. The Residential Owner may not exercise the right to use the Common Area and/or any facilities thereon until such Residential Owner reassumes possession of the Unit.

13.1.4 **Unlawful Detainer to Enforce Rules.** Any Residential Owner who shall lease his or her Unit shall be responsible for insuring compliance by such Residential Owner's lessee with the Restrictions. Failure by a lessee to comply with Section 13.1.7 below entitled "Assignment of Rents," or failure of any Residential Owner to take legal action against his or her lessee who is in violation of the Restrictions (within ten (10) days after receipt of written demand so to do from the Board), shall entitle the Association, through the Board, to institute unlawful detainer proceedings on behalf of such Residential Owner against his or her lessee. Any expense incurred by the Association, including reasonable attorneys' fees and costs, shall become a Special Assessment against the Unit.

13.1.5 **Association Approval.** No Owner may lease or rent a Unit without first obtaining the approval of the Association; *provided, however*, that such approval must be reasonable and the Association shall only exercise its power in a fair and nondiscriminatory manner and in compliance with all applicable laws and regulations, including, without limitation, the Federal Fair Housing Act (42 U.S.C. §§3601 *et seq.*) and the California Unruh Civil Rights Act (Civil Code §§51 *et seq.*). The Association shall withhold approval only for a reason or



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reasons rationally related to the protection, preservation and proper operation of the Residential Project. In the event any Residential Owner shall attempt to lease or rent to a Person without notifying the Association as herein provided, such lease shall be null and void.

13.1.6 **Leasing Fee.** In order to reimburse the Association for the additional expenses and risks that will result from leasing a Unit, the Residential Owner shall be required, prior to lessee's occupancy of the Unit, to pay a non-refundable fee (the "**Leasing Fee**") to the Association equal to two (2) months of the Regular Assessments for the Unit. The Leasing Fee is in addition to the Regular Assessments owing for a Unit and the Owner shall remain liable for all Regular Assessments for the Unit during such time as the Unit is leased to the lessee.

13.1.7 **Assignment of Rents.** As security for the payment of Assessments, each Residential Owner assigns to the Association all of his or her rights as landlord to:

- (a) collect the rents, issues and profits (collectively, "**Rent**") of said Owner's Unit, including Rent due and unpaid;
- (b) initiate any unlawful detainer action against the lessee;
- (c) enter upon and take possession of the Unit;
- (d) re-rent the Unit in the Association's name and collect Rent therefrom without liability to the Residential Owner, except for any Rent which may be collected over and above the Assessments owed to the Association by the Residential Owner; and
- (e) avail itself of any other remedies permitted by law.

Notwithstanding the foregoing, each Residential Owner retains the right to collect Rent from his or her Unit for so long as the Residential Owner shall be current in the payment of his or her Assessments to the Association. Once an Owner becomes delinquent in the payment of his or her Assessments, such Residential Owner's rights as landlord are extinguished in favor of the Association. Upon any delinquency by the Owner to pay Assessments as they come due, the Association may, upon ten (10) days' written notice to such Residential Owner and to such Residential Owner's lessee, direct the lessee to make all Rent payments to the Association until such time as the Owner's delinquency is cured. The Association's right to collect Rent is without regard to the adequacy of any other security for such indebtedness. In the event proceedings are brought by the Association to enforce any of the provisions in this Section, the prevailing party shall be entitled to recover all fees and costs (including reasonable attorneys' fees and costs) incurred by such party in such proceeding. The assignment of Rents and powers described in this Section shall not effect, and shall in all respects be subordinate to, the rights and powers of the holder of any First Mortgage on any Unit.

13.1.8 **Transfer of Occupancy.** Prior to the transfer of occupancy of a Unit:

- (a) The Residential Owner who leases the Unit shall promptly notify the Association and the Hotel Owner in writing of the name and address of the lessee, as well as such other information relative to the lease and the lessee as the Association may

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reasonably request, including without limitation, information concerning the creditworthiness of the lessee. A copy of the signed Lease Addendum must be submitted to the Association and to the Hotel Owner prior to the occupancy of the Unit by the lessee.

(b) To defray the expense incurred by the Association in facilitating moves into and out of the Residential Project by tenants (including the cost of wear and tear to the Common Areas), the Board may impose and collect a reasonable amount in the form of a Reimbursement Assessment from any Residential Owner upon each transfer of occupancy of said Residential Owner's Unit.

Each Residential Owner shall indemnify, defend and hold harmless the Association, as well as its officers, directors, and employees from any injury or damage resulting from the transfer of occupancy.

#### **ARTICLE XIV.**

#### **PARTITION AND SEVERABILITY OF INTERESTS**

14.1 **Sale of Property and Right to Partition.** No Residential Owner shall have the right to partition his or her interest in the Condominium and there shall be no judicial partition of the Residential Project, or any part thereof, except as provided in Section 4610 of the California Civil Code as amended or in any successor statute. For purposes of Subsection (b)(4) of said Section 4610, partition may occur only if all of the following conditions are satisfied: (a) the Condition to Reconstruction described in Section 12.1 above has failed to occur; and (b) within six (6) months after the date on which destruction occurred, restoration or repair has not actually commenced; and (c) the Residential Owners of sixty-seven percent (67%) of the Condominiums approve the partition by vote or written consent. In such event, the Association, acting through a majority of the Board, shall prepare, execute and record, as promptly as practical, the certificate stating that a majority of the Board may properly exercise an irrevocable power of attorney to sell the Residential Project for the benefit of the Residential Owners and such other documents and instruments as may be necessary for the Association to consummate the sale of the Residential Property at the highest and best price obtainable, either in its damaged condition, or after damaged structures have been razed, subject to the Hotel Owner's right to purchase the Residential Property as set forth in Section 8.4 of the Reciprocal Easement Agreement. Such certificate shall be conclusive evidence of such authority for any Person relying thereon in good faith. Nothing herein shall be deemed to prevent partition of a co-tenancy in any Condominium. Except as provided above, each Residential Owner and the successors of each Residential Owner, whether by deed, gift, devise, or by operation of law, for their own benefit and for the Units and for the benefit of all other Residential Owners, specifically waive and abandon all rights, interests and causes of action for a judicial partition of the tenancy in common ownership of the Residential Project and do further covenant that no action for such judicial partition shall be instituted, prosecuted or reduced to judgment.

14.2 **Distribution of Proceeds.** The net proceeds of a sale pursuant to Section 14.1 and the proceeds of any insurance carried by the Association or received by the Association from the Master Association shall be divided proportionately among the Residential Owners, such proportions to be determined in accordance with the relative appraised fair market valuation of the Condominiums as of a date immediately prior to such destruction (or condemnation),

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expressed as percentages, and computed by dividing such appraised valuation of each Condominium by the total of such appraised valuations of all Condominiums in the Residential Project. The Board is hereby authorized to hire one (1) or more appraisers for such purpose and the cost of such appraisals shall be a Common Expense of the Association. Notwithstanding the foregoing, the balance then due on any valid encumbrance of record shall be first paid in order of priority, before the distribution of any proceeds to a Residential Owner whose Condominium is so encumbered.

14.3 **Conveyances.** After the initial sales of the Condominiums, any conveyance of a Condominium by a Residential Owner shall be presumed to convey the entire Condominium. However, nothing contained in this Section shall preclude the Residential Owner of any Condominium from creating an estate for life or years, co-tenancy or joint tenancy in the ownership of its Condominium with any other person or persons.

## **ARTICLE XV.**

### **RIGHTS OF MORTGAGEES**

15.1 **Filing Notice; Notices and Approvals.** A Mortgagee shall not be entitled to receive any notice which this Declaration requires the Association to deliver to Mortgagees unless and until such Mortgagee, or its mortgage servicing contractor, has delivered to the Board a written notice stating that such Mortgagee is the holder of a Mortgage encumbering a Unit within the Residential Project. Such notice need not state which Unit(s) are encumbered by such Mortgage, but shall state whether such Mortgagee is a First Mortgagee. Wherever the approval of all or a specified percentage of Mortgagees is required pursuant to this Declaration, it shall be deemed to mean the vote or approval of all or a specified percentage only of those Mortgagees which have delivered such notice to the Board. Notwithstanding the foregoing, if any right of a Mortgagee under this Declaration is conditioned on a specific written request to the Association, in addition to having delivered the notice provided in this Section, a Mortgagee must also make such request, either in a separate writing delivered to the Association or in the notice provided above in this Section, in order to be entitled to such right. Except as provided in this Section, a Mortgagee's rights pursuant to this Declaration, including, without limitation, the priority of the lien of Mortgages over the lien of Assessments levied by the Association hereunder shall not be affected by the failure to deliver a notice to the Board. Any notice or request delivered to the Board by a Mortgagee shall remain effective without any further action by such Mortgagee for so long as the facts set forth in such notice or request remain unchanged.

15.2 **Priority of Mortgage Lien.** No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall affect, impair, defeat or render invalid the lien or charge of any First Mortgage made in good faith and for value encumbering any Unit, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Unit except as otherwise provided in this Article.

15.3 **Curing Defaults.** A Mortgagee or the immediate transferee of such Mortgagee, who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration which is non-curable or of a type which is not practical or feasible to cure. The determination of the Board made in good

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faith as to whether a breach is non-curable or not feasible to cure shall be final and binding on all Mortgagees.

15.4 **Resale.** It is intended that any loan to facilitate the resale of any Unit after judicial foreclosure, deed in lieu of foreclosure or trustee's sale is a loan made in good faith and for value and entitled to all of the rights and protections afforded to other Mortgagees.

15.5 **Relationship with Assessment Liens.**

15.5.1 The lien provided for the payment of Assessments (excepting Remedial Assessments) shall be subordinate to the lien of any First Mortgage which was recorded prior to the date any such Assessment becomes due.

15.5.2 If any Unit subject to a monetary lien created by any provision hereof shall be subject to the lien of a First Mortgage: (1) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such First Mortgage; and (2) the foreclosure of the lien of said First Mortgage or the acceptance of a deed in lieu thereof (such events being hereinafter referred to as "**Events of Foreclosure**") shall not operate to affect or impair the lien hereof, except that any persons who obtain an interest through any of the Events of Foreclosure, and their successors in interest, shall take title free of the lien hereof or any personal obligation for said charges as shall have accrued up to the time of any of the Events of Foreclosure, but subject to the lien hereof for all said charges that shall accrue subsequent to the Events of Foreclosure.

15.5.3 Any Mortgagee who obtains title to a Unit by reason of any of the Events of Foreclosure, or any purchaser at a private or judicial foreclosure sale, shall take title to such Unit free of any lien or claim for unpaid Assessments against such Unit which accrue prior to the time such Mortgagee or purchaser takes title to such Unit, except for liens or claims for a share of such Assessments resulting from a pro-rata reallocation of such Assessments to all Units within the Residential Project.

15.5.4 Nothing in this Section shall be construed to release any Owner from his or her obligations to pay for any Assessment levied pursuant to this Declaration.

15.6 **Fifty-One Percent (51%) Vote of Institutional Mortgagees.** Except upon the prior written approval of at least fifty-one percent (51%) of Institutional Mortgagees, based on one (1) vote for each Unit encumbered by a First Mortgage held by such Institutional Mortgagee(s), neither the Association nor the Members shall be entitled to do any of the following:

15.6.1 dissolve the Association or abandon or terminate the maintenance of the Common Area by the Association;

15.6.2 amend a material provision of this Declaration or of the Bylaws, provided "material amendment" shall mean amendments governing the following subjects:

(a) the fundamental purpose for which the Residential Project was created (such as a change from residential use to a different use);

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- (b) voting rights;
  - (c) annual increases in Assessments that raise the previously assessed amount by more than twenty percent (20%), Assessment liens, or the priority of Assessment liens;
  - (d) reductions in the reserves for repair and replacement of the Common Area;
  - (e) property maintenance obligations;
  - (f) casualty, fidelity and liability insurance requirements;
  - (g) reconstruction in the event of damage or destruction;
  - (h) rights to use the Common Area;
  - (i) annexation;
  - (j) any provision which, by its terms, is specifically for the benefit of First Mortgagees, or specifically confers rights of First Mortgagees; and
  - (k) restrictions on the sale or transfer of Units.

15.6.3 effectuate any decision to terminate professional management and assume self-management of the Residential Project; or

15.6.4 abandon, partition, sell, alienate, subdivide, release, transfer, hypothecate or otherwise encumber the Common Area; *provided, however*, the granting of easements for public utilities or other purposes which are consistent with the intended use of the Common Area shall not require such approval.

**15.7 Other Rights of Institutional Mortgagees.** Any Institutional Mortgagee or its mortgage servicing contractor, shall, upon written request to the Association, be entitled to:

15.7.1 inspect the books and records of the Association during normal business hours;

15.7.2 receive the annual audited financial statement of the Association one hundred and twenty (120) days following the end of the Association's fiscal year;

15.7.3 receive written notice of all annual and special meetings of the Members of the Board, and Institutional Mortgagees shall further be entitled to designate a representative to attend all such meetings in order to, among other things, draw attention to violations of this Declaration which have not been corrected or made the subject of remedial action by the Association; *provided, however*, nothing contained in this Section shall give an Institutional Mortgagee the right to call a meeting of the Board or of the Members for any purpose or to vote at any such meeting; and

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15.7.4 receive written notification from the Association of any default in the performance of the obligations imposed by this Declaration by the Owner whose Unit is encumbered by such Institutional Mortgagee's Mortgage, which default has not been cured within sixty (60) days of a request therefor by the Association (a "**Delinquency Notice**"); *provided, however*, the Association shall only be obligated to provide such notice to Institutional Mortgagees who have delivered a written request therefor to the Association specifying the Unit(s) to which such request relates. Any Institutional Mortgagee who receives a Delinquency Notice shall have the right, but not the obligation, to elect in its sole discretion to cure any such default on behalf of such Owner within thirty (30) days thereafter, or in the case of a default which by its nature requires an Institutional Mortgagee to take possession of Unit(s) to cure, such Institutional Mortgagee shall be provided additional time as may reasonably be required to take possession of the applicable Unit(s), and the Association shall accept such performance by such Institutional Mortgagee with the same force and effect as if furnished by such Owner.

15.8 **Mortgagees Furnishing Information**. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage.

15.9 **Inapplicability of Right of First Refusal to Mortgagee**. A Mortgagee who comes into possession of a Unit pursuant to a judicial foreclosure, a deed in lieu of foreclosure or a trustee's sale shall be exempt from the right of first refusal described in Section 7.22 herein and any other right of first refusal that may be adopted by amendment to this Declaration. In addition, conveyances to and from third party foreclosure purchasers and mortgage insurers and guarantors shall also be exempt.

15.10 **Conflicts**. In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Declaration, the provisions of this Article shall control.

15.11 **Distribution of Insurance and Condemnation Proceeds**. No Residential Owner, or any other party, shall have priority over any right of First Mortgagees in case of a distribution to Residential Owners of insurance proceeds or condemnation awards for losses to or a taking of Condominiums or Common Area. Any provision to the contrary in this Declaration or in the other Residential Documents is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected First Mortgagees, naming the First Mortgagees, as their interests may appear.

15.12 **Voting Rights of Institutional Mortgagees**. In the event of a default by a Residential Owner in any payment due under the terms of any First Mortgage held by an Institutional Mortgagee or the promissory note secured thereby, the Institutional Mortgagee or its representative shall have the right, upon giving written notice to such defaulting Residential Owner and the Association and placing of record a notice of default, to exercise the voting rights of such defaulting Residential Owner attributable to such Unit at any regular or special meeting of the Members held during such time as such default may continue. Any such Residential Owner's voting rights shall be restored to him at such time as such default is cured.

15.13 **Notice of Destruction or Taking**. In the event that the Residential Project, or any portion thereof, is substantially damaged or is made the subject of any condemnation

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proceeding in eminent domain or is otherwise sought to be acquired by a condemning authority, the Board shall promptly notify any Institutional Mortgagee affected by such destruction, taking or threatened taking. As used herein, "substantially damaged" or "taking" shall mean damage or taking exceeding One Hundred Thousand Dollars (\$100,000) (measured in Constant Dollars, updated annually at the beginning of each Fiscal Year). If requested in writing by an Institutional Mortgagee, the Association shall evidence its obligations under this Section in a written agreement in favor of such Institutional Mortgagee.

**15.14 Payment of Taxes or Premiums by Institutional Mortgagees.** Institutional Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area, unless such taxes or charges are separately assessed against the Residential Owners, in which case the rights of Institutional Mortgagees shall be governed by the provisions of their Mortgages. Institutional Mortgagees may, jointly or singly, also pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Area and Institutional Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any Institutional Mortgagee which requests the same to be executed by the Association.

## **ARTICLE XVI.**

### **DURATION AND AMENDMENT**

**16.1 Duration.** The easements, covenants, conditions and restrictions of this Declaration shall run with and bind the Residential Property and shall inure to the benefit of and be enforceable by the Association or any Member, their respective legal representatives, heirs, successors and assigns, for a term of ninety-nine (99) years from the date this Declaration is recorded, after which time said easements, covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless an instrument satisfying the requirements of Section 16.2 has been recorded in the Official Records, within the year preceding the end of any such term, in which it is agreed that this Declaration shall terminate at the end of the then applicable term or as otherwise agreed.

**16.2 Termination and Amendment.**

16.2.1 Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form shall be included in the notice of any meeting or election of the Association at which a proposed amendment is to be considered. The resolution shall be adopted by the vote, in person or by proxy, or written consent of Members representing not less than (i) sixty-seven percent (67%) of the Voting Power of each Class of Members of the Association, and (ii) sixty-seven percent (67%) of the Voting Power of the Association residing in Members other than Declarant, provided that the specified percentage of the Voting Power of the Association necessary to amend a specified Section or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that Section or provision.

16.2.2 Termination of this Declaration shall require approval by the Members as provided in Section 16.2.1 above. No such termination shall be effective unless it is also

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approved in advance by Institutional Mortgagees holding seventy-five percent (75%) of the First Mortgages encumbering the Units, based on one (1) vote for each Unit encumbered by a First Mortgage.

16.2.3 Each First Mortgagee on a Condominium in the Residential Project which receives proper written notice of a proposed amendment or termination of this Declaration by certified or registered mail with a return receipt requested shall be deemed to have approved the amendment or termination if the First Mortgagee fails to submit a response to the notice within sixty (60) days after the First Mortgagee receives the notice.

16.2.4 A copy of each amendment shall be certified by at least two (2) officers of the Association, and the amendment shall be effective when a "Certificate of Amendment" is recorded. The Certificate of Amendment, signed and sworn to by two (2) officers of the Association that the requisite number of Residential Owners and Mortgagees have either voted for or consented in writing to any amendment adopted as provided above, when recorded, shall be conclusive evidence of that fact. The Association shall maintain in its files the record of all such votes or written consents for a period of at least four (4) years. The certificate reflecting any termination or amendment which requires the written consent of any of the First Mortgagees shall include a certification that the requisite approval of such First Mortgagees has been obtained.

16.2.5 Notwithstanding Section 16.2.6, Section 16.2.7 and/or any other provisions of this Section 16.2, but subject to Section 16.2.8 below, at any time prior to the first anniversary of the first Close of Escrow for the sale of a Unit in the Residential Project, Declarant may unilaterally amend this Declaration in its sole and absolute discretion by recording a written instrument which effects the amendment and is signed and acknowledged by Declarant. Notwithstanding the foregoing, no such amendment made after the first Close of Escrow for the sale of a Unit in the Residential Project shall materially change the rights of any Residential Owner under this Declaration.

16.2.6 Notwithstanding Section 16.2.5, Section 16.2.7, and/or any other provisions of this Section 16.2, but subject to Section 16.2.8 below, for so long as Declarant owns any portion of the Residential Property, Declarant may unilaterally amend this Declaration by recording a written instrument signed by Declarant in order to conform this Declaration to the requirements of the DRE, the City, or any Applicable Laws.

16.2.7 Notwithstanding Section 16.2.5, Section 16.2.6, and/or any other provisions of this Declaration, but subject to Section 16.2.8 below, Declarant reserves the right at any time to unilaterally make certain amendments to this Declaration and/or the Condominium Plan to amend same to add any necessary easements and/or use rights consistent with the overall development of the Residential Property, and to make technical corrections, correct errors or omissions, or more precisely describe the actual sizes and locations of the areas or Improvements described herein including, without limitation, such adjustments to Unit boundary lines, Common Area boundaries, and/or any other matters as necessary to accommodate minor encroachments of Improvements in, to, over, or across any Unit, or Common Area, and each Residential Owner by acceptance of a grant deed to its Condominium, acknowledges, accepts, and takes subject to the possibility of such possible adjustments. Declarant shall effect such



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changes by preparing or causing to be prepared, and recording or causing to be recorded, a declaration in a form determined by Declarant.

16.2.8 Notwithstanding any other provision herein, no amendment of this Declaration which affects, amends, modifies, or terminates (i) any rights of the City, or (ii) any provision hereof required to be included herein by the City (including pursuant to any condition of approval of any entitlement for the Residential Project), shall be effective without the City's prior written consent.

## **ARTICLE XVII. PROJECT DISCLOSURES**

Each Residential Owner of a Condominium, by acceptance of a grant deed to a Condominium, acknowledges the following:

17.1 **Mixed-Use Project.** The Century Plaza Project is a "mixed-use" project, including residential, hotel and retail elements. Retail activities are permitted in the Hotel Project and elsewhere in the Century Plaza Project, including the operation of bars and restaurants. Each Residential Owner recognizes and accepts that combining hotel, retail and residential uses may present a number of issues and concerns which may not otherwise be present in a strictly residential project, including, without limitation, additional noise, odors, fumes, smoke (including, without limitation, exhaust from bars and restaurants operated from the Hotel Project and elsewhere in the Century Plaza Project and smoke from cigarettes and cigars), vehicular traffic, pedestrian traffic, diminished security, and other similar issues and/or disturbances associated with any area where commercial activity is present or prevalent. Because of the connection between the Residential Project and the Hotel Project, the Hotel Owner (and the Hotel Operator acting on behalf of the Hotel Owner) will exercise a level of control pursuant to the Reciprocal Easement Agreement over significant portions of the Hotel Building (including portions that comprise the Residential Project) that is very different than would be expected in a typical stand-alone condominium project, including but not limited to design and maintenance of Building Shared Use Areas and Shared Building Facilities (including the Exterior Facade) and the maintenance of Shared Utility Facilities. Pursuant to the Reciprocal Easement Agreement, the Association will be responsible to reimburse the Hotel Owner for a portion of the costs incurred by the Hotel Owner in maintaining Building Shared Use Areas, Shared Building Facilities and Shared Utility Facilities. The Master Association will exercise control over common areas of the Century Plaza Project pursuant to the Master Declaration. In addition, the mixed-use nature of the Century Plaza Project may result in higher insurance premiums and other costs due to the commercial activities being conducted in the Century Plaza Project. None of Declarant, Hotel Owner or the Master Association shall be responsible for any such additional costs which shall be allocated strictly in accordance with the provisions of this Declaration, the Reciprocal Easement Agreement and the Master Declaration. Each Residential Owner agrees to abide by any provisions herein, in the Reciprocal Easement Agreement which delegate to the Hotel Owner certain rights to regulate and/or operate the Hotel Project without interference by Residential Owners and/or the Association and in the Master Declaration which delegate to the Master Association certain rights to regulate and/or operate components of the Century Plaza Project without interference by Residential Owners and/or the Association. Specifically, and notwithstanding any other provision in this Declaration, under no

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circumstances shall any Residential Owners, nor the Association, have any right to object to, nor in any way to interfere with, any use, operation, further subdivision, demising, leasing, subleasing, or any other matter concerning or related to the Hotel Project, *provided* that the Hotel Project and the Hotel Owner are in compliance with the Project Approvals, the applicable provisions of this Declaration, the Reciprocal Easement Agreement and the Master Declaration.

17.2 **Notice Regarding Water Intrusion.** Notwithstanding any other provision herein, in the event that there shall be intrusion of water into any Unit (including, without limitation, as a result of any roof, window, curtain wall or other leaks (including, without limitation, plumbing leaks)), the Residential Owner of the impacted Unit shall be obligated to immediately notify the Association of such event, and such Owner shall take all necessary and appropriate action to repair such condition and stop any such water intrusion. In the event of any water intrusion into the Common Area and/or upon the Association's receipt of notice from a Residential Owner regarding water intrusion in such Unit, the Association shall thereafter take all appropriate action including a prompt inspection of the condition, repair of the condition (if such condition impacts the Common Area) and mitigation of mold or mildew. Each Residential Owner shall be obligated to take all reasonable steps to mitigate any possible spread or accumulation of mold or mildew. Failure of any Owner to timely notify the Association of any such water intrusion and the failure of the Association to promptly repair such condition shall be cause to deny future claims against Declarant relating thereto, which claims could have been mitigated had earlier action been taken.

17.3 **Mold.** There is, and will always be, the presence of certain biological organisms within Units. Most typically, this will include the common occurrence of mold. In recent years, mold has received significant attention. Mold tends to proliferate in warm, wet areas. High levels of mold in an enclosed setting may lead to mild to significant detrimental health effects. As such, it is each Residential Owner's responsibility to maintain his or her Unit so as to avoid the accumulation of moisture and/or mold within the Unit. Such mitigation matters should include, without limitation, the frequent ventilation of the Unit, removal of standing water on patio or deck areas, prompt repair of any leaks which permit water intrusion into the Unit, and prompt repair of plumbing leaks within the Unit (irrespective of who may have caused any such leaks). Each Residential Owner also understands that the presence of indoor plants may also increase mold levels within the Unit. Also, the propping of large pieces of furniture against wall surfaces may lead to mold spore accumulation. It is the responsibility of each Residential Owner to monitor and maintain his or her Unit so as to mitigate and avoid the conditions which are likely to lead to the presence and/or spreading of mold. In the event that mold does appear within the Unit, it is also the Owner's responsibility to promptly and properly treat such mold to minimize the spreading thereof and/or potentially unhealthy conditions likely to arise as a result thereof. Such measures frequently include, but are not limited to, cleaning mold-affected surfaces with chlorine bleach. Each Residential Owner is responsible to learn how to clean any affected Improvements.

17.4 **View Impairment.** Neither Declarant, nor any of their respective authorized agents, representatives or employees have made any representations, warranties or promises concerning any view, present or future, that may be enjoyed from all or any portion of the Residential Project. The view from any portion of the Residential Project may change, be affected or obstructed by (i) construction or installation of improvements, structures, fences,

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walls and/or landscaping by Declarant or other owners of property within or outside the Residential Project, the Combined Project or the Century Plaza Project and/or (ii) the growth of trees, landscaping and/or vegetation within or outside the Residential Project. Therefore, Owners acknowledges that, under California law, views are not subject to legal protection. Furthermore, this Declaration does not contain any other provisions intended to protect the view from any portion of the Residential Project.

17.5 **Building Code.** The Hotel Building was renovated by Declarant in accordance with the standards and requirements set forth in the applicable building code at the time the plans for the renovation were submitted to the City for approval. Given the Hotel Building's age and its historic designation as noted in Section 17.19 below, the Hotel Building may not be required to meet the most current building code requirements that would be applicable to construction of a new building. Under no circumstances shall Declarant be responsible to install, modify, or replace any Improvements to bring same into compliance with any later version of or other standards set forth in the applicable building code, nor shall Declarant be liable to any party as a result of the Improvements not complying in any respect with any updates or changes to the applicable building code.

17.6 **Noise.** Acoustical privacy is in the mutual interest and benefit of all Owners, lessees and other occupants of the Residential Project. It is recognized, however, that total isolation from adjacent Units and the Hotel Project in a manner comparable to a single family home is difficult if not impossible to attain. Sound, both laterally and vertically, from adjoining Units, Common Areas and the Hotel Project is inevitable, including, without limitation, the sound of mechanical equipment, plumbing, television and/or stereo, impact noise (footfall) from adjoining Units, *etc.* The Residential Project is attached to the Hotel Project and located within the Century Plaza Project, each of which may produce numerous and continuous sources of noise (*e.g.*, Hotel guests entering and exiting the Hotel Project, typical Hotel operations, the Shared Pool Deck, bars and restaurants, dining areas, retail areas, smoking areas, truck and car traffic, garage operations, equipment and machinery, weddings, banquets, concerts, parties and other special events at the Hotel and/or in the plaza areas of the Century Plaza Project, *etc.*). The Residential Project is also located in an area that is surrounded by commercial uses with numerous and continuous sources of noise (*e.g.*, truck traffic, street traffic, helicopters, emergency vehicles, equipment, machinery, filming traffic, *etc.*). In addition, the Residential Project itself will generate numerous sources of noise (*e.g.*, trash removal, operation of Building equipment, *etc.*). Each Residential Owner recognizes that noise attenuation between Units (side to side and top to bottom), noise from the Hotel Project and the Century Plaza Project, and noise from the surrounding streets and community will have an impact on Owners and each Residential Owner accepts his or her Unit with the full understanding of the level and potential impact of such noise on the habitability of the Unit.


17.7 **A La Carte Services.** The Hotel Operator will provide A La Carte Services to Residential Owners. All such A La Carte Services will be reimbursable by Residential Owners directly to the Hotel Operator and neither Declarant nor the Association shall have any obligation to reimburse the Hotel Operator for any A La Carte Services. The Hotel Operator shall have the right to modify the A La Carte Services program.

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17.8 **Neighborhood Conditions.** The Residential Project is located in a commercial, urban area which generates numerous unique conditions and impacts. Such impacts and conditions include, without limitation, traffic, filming activity, crime and business activity. Many of the foregoing impacts occur at all times of the day and night. Each Residential Owner recognizes that the foregoing "urban" impacts are a major element of the unique characteristics and mixture of uses that attracted such Residential Owner to the Residential Project and recognizes that Declarant has no obligation to take any action to reduce or eliminate the foregoing impacts.

17.9 **Additional Development.** There are a number of properties located in the vicinity of the Residential Project which will likely be developed or readapted in the future. Each Residential Owner recognizes the potential impacts of such development on the community and the Residential Project (e.g., additional traffic, parking impacts, noise impacts, market impacts, etc.) and acknowledges that he or she is purchasing a Unit with the full understanding of such potential impacts.

17.10 **Proposition 65.** In 1986, California voters approved Proposition 65, an initiative measure officially known as the Safe Drinking Water and Toxic Enforcement Act of 1986. Proposition 65, including in its since-modified form, requires entities to warn persons of an exposure to certain chemicals which have been placed on a list by the Governor as substances known to the State to cause cancer or reproductive toxicity. As the law currently exists, an entity must provide a Proposition 65 warning if there is a potential for such exposure unless it can be proven with certainty, through scientific testing and analysis that the exposure level is so small that it poses no significant risk to the person exposed. Some of the chemicals listed under Proposition 65 have long been used in building materials and may be found in such common construction products as cement, lumber, paint, carpeting, plastic and glass. As such, Declarant makes the following warning:

 **WARNING:** ENTERING THIS AREA (I.E., THE PROJECT) CAN EXPOSE YOU TO CHEMICALS KNOWN TO THE STATE OF CALIFORNIA TO CAUSE CANCER AND BIRTH DEFECTS OR OTHER REPRODUCTIVE HARM, INCLUDING BENZENE, FORMALDEHYDE, LEAD, AND STYRENE EXIDES, FROM VARNISHES, WALLBOARDS, CARPETS, CARPET GLUES, BRASS SHUT-OFF VALVES AND LIGHT BULBS. FOR MORE INFORMATION GO TO [WWW.P65WARNINGS.CA.GOV](http://WWW.P65WARNINGS.CA.GOV).

17.11 **Methane.** The site is located in a methane zone as designated by the City. Therefore, there exists a risk of the presence of methane within the soil located in the Century Plaza Project. Methane is a naturally occurring gas resulting from decomposition of biological organisms in the earth. Methane, if present, is highly combustible, and, as such, must be appropriately mitigated. The Master Association shall be responsible for certain systems which have been installed in the Century Plaza Project to address the methane concerns (e.g., methane barriers, monitoring and exhaust systems). Declarant is not responsible for any ongoing mitigation of methane associated with the Century Plaza Project and makes no representations or warranties with respect thereto.

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17.12 **Oil Wells.** The Century Plaza Project is located in a region of past oil and gas development and there are two capped oil wells located at the Century Plaza Project.

17.13 **Asbestos.** The Hotel Building is a pre-existing structure which is being renovated by Declarant during the course of Declarant's development and construction of the Combined Project. Due to its age, the Hotel Building may contain asbestos-containing materials ("**ACMs**") and presumed asbestos-containing materials ("**PACMs**") even after completion of Declarant's renovations. Each Residential Owner, by acceptance of a grant deed to such Residential Owner's Unit, acknowledges receipt of the notification in this **Section 17.13** and understands that the purpose of such notification is to make such Residential Owner, and any agents, employees, and contractors of such Residential Owner, aware of the presence of ACMs and/or PACMs within or about the Residential Project order to avoid or minimize any damage to or disturbance of such ACMs and/or PACMs.

17.14 **Cellular Antennas.** Pursuant to the Cell Site Leases (as defined in the Master Declaration), cellular antennas, transmission lines and related equipment are maintained on portions of the Century Plaza Project including, without limitation, the Hotel Building.

17.15 **Square Footage Estimated.** Any dimensions, size and/or square footage calculations or information pertaining to Units, Common Areas and/or any other portions of the Residential Project (including landscaping areas) set forth in the Condominium Plan, marketing materials or any other document(s) are not intended to be a precise representation of the actual square footage of such Unit, Exclusive Use Common Area and/or other portion of the Residential Project. All dimensions and square footages are approximate and subject to normal construction variances and tolerances and changes resulting from unforeseen conditions and are not intended to be and shall not be used as a statement of actual usable space contained within any Unit or described in any Condominium Plan. Certain dimensions and square footages used for marketing and other purposes (including variable Assessment allocations) have been measured to the interior face of windows, the interior face of the structure at the perimeter of the Hotel Building, the outside face of walls shared with Common Area corridors and with certain other Common Area elements (*i.e.*, fire stairs, back of house hallway, electrical rooms), and the center line of unit demising walls (*i.e.*, walls between two adjacent Units) and walls shared with elevator vestibules and include perimeter and interior walls, windows, shafts, columns and other structural elements which are not a part of the usable space of a Unit. Different measurement techniques may be used for other purposes (*e.g.*, appraisals) or by the County Assessor. Exclusive Use Common Area elements may not be included in Assessor calculations. Declarant reserves the right to make modifications to the floor plans and unit dimensions at any time. Each Residential Owner (and every potential Owner) should conduct its own investigation to ascertain the exact square footage of any Unit or other portion of the Residential Project and shall not rely on any representations of Declarant with respect to such matters. The purchase price of any Unit within the Residential Project sold by Declarant is not based on square footage.

17.16 **Business Improvement District.** The Residential Project is located in, and is part of, the Century City Business Improvement District (the "**BID**"). The BID is a benefit assessment district designed to improve and convey special benefits to properties located in Century City. Each Residential Owner may be required to pay additional tax assessments to the BID for a number of purposes including, but not limited to, capital improvements such as

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maintenance along Avenue of the Stars, enhanced maintenance of landscaped corridors and pedestrian security and safety.

17.17 **Neighborhood Covenants and Restrictions.** The Century Plaza Project is subject to certain covenants to benefit neighboring businesses and residents including, without limitation, (i) limitations on the height of buildings near the neighboring Century Woods residential property (the "**Century Woods Property**"), (ii) limitations on restaurants, bars and nightclubs operating in certain portions of the Century Plaza Project, (iii) a requirement that a barrier be continuously maintained at the Century Plaza Project to ensure that headlights do not shine into the residences in the Century Woods Property, (iv) restrictions on the use of the Loading Dock (as defined in the Master Declaration), (v) limitations on the types of retail uses at the Century Plaza Project and the square footage allowed for certain retail uses, (vi) restrictions on office uses at the Century Plaza Project and (vii) requirements that the Century Plaza Project use low reflectivity/glare glass or non-reflective materials.

17.18 **Hotel Building Renovation.** The Hotel Building was originally constructed in 1966. The Hotel Building was originally designed, built and operated as a hotel. Despite compliance with building codes applicable to the renovation work, the Hotel Building does not meet all current building code requirements applicable to new construction. The renovation of an existing hotel structure, such as the Hotel Building, presents unique issues that may or may not be present in a newly constructed residential building. Such issues may include noise attenuation, ventilation, and/or other issues that are unique to such structures.

17.19 **Landmark Status of the Hotel Building.** The Hotel Building has been designated as a Historic-Cultural Monument by the City. This designation may impact the ability of the Master Association, the Hotel Owner, Association and/or the Residential Owners to alter the Hotel Building including certain site improvements adjacent to the Hotel Building. In particular, future alterations to the Hotel Building that affect the Hotel Building's character defining features will be subject to approval by the City's Office of Historic Resources.

17.20 **Shared Pool Deck.** The Hotel Owner and/or Hotel Operator shall be permitted to restrict Residential Owners' access to the Shared Pool Deck as a result of special Hotel events.

17.21 **Reciprocal Easement Agreement and Master Declaration.** Each Residential Owner shall be bound by the terms and conditions of the Reciprocal Easement Agreement and the Master Declaration. The Reciprocal Easement Agreement and the Master Declaration each contain additional disclosures regarding the Residential Project, the Combined Project and the Century Plaza Project and each Residential Owner acknowledges such disclosures.

## **ARTICLE XVIII.**

### **ENFORCEMENT AND DISPUTE RESOLUTION**

#### **18.1 Enforcement and Non-Waiver.**

18.1.1 *Rights of Enforcement of Residential Documents.* The Association, Declarant or any Residential Owner shall have a right of action against any Residential Owner, and any Residential Owner or Declarant shall have a right of action against the Association, to enforce by proceedings at law or in equity, all covenants, conditions, and restrictions, now or

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hereafter imposed by the provisions of the Residential Documents or any amendment thereto, including the right to prevent the violation of such covenants, conditions and restrictions and the right to recover damages for such violation except that Residential Owners shall not have any right of enforcement concerning Assessment liens. The Association shall have the exclusive right to the enforcement of provisions relating to architectural control and the Association Rules, unless the Association refuses or is unable to effectuate such enforcement, in which case any Residential Owner who otherwise has standing shall have the right to undertake such enforcement. In the event that a Residential Owner alleges that another Residential Owner, such Residential Owner's Family, guests or tenants, is violating any of the Residential Documents (other than nonpayment of any type of Assessment), the Residential Owner must first submit the matter to the Board pursuant to the Notice and Hearing procedure established in the Bylaws before the complaining Residential Owner may resort to legal action for relief with respect to the alleged violation. Failure of the Association, Declarant or any Residential Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

18.1.2 *All Owners and Occupants Bound.* All Owners and other Occupants of the Residential Property are subject to and bound by the provisions of this Declaration. All Residential Owners shall require their Occupants and Permittees to observe all applicable provisions of this Declaration and shall incorporate this Declaration into all agreements for the rental or lease of a Condominium.

18.1.3 *Schedule of Fines.* The Board may adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, it may assess against an Owner for the failure of such Owner, or of a resident of or visitor to such Owner's Unit, to comply with any provisions of the Restrictions. Such fines or penalties may only be assessed by the Board after Notice and Hearing.

18.1.4 *Procedure for Enforcement.* Notwithstanding anything to the contrary set forth in Section 18.1.1, in enforcing any action under the Residential Documents for injunctive relief, declaratory relief and/or monetary damages (excluding actions in Small Claims Court), the parties shall comply with the applicable notice and delivery requirements and other provisions of California Civil Code Section 4000 *et seq.* relating to such enforcement action.

18.2 **Notice of Actions Against Declarant.** Subject to the Dispute Resolution Procedures, the Association shall comply with the provisions of California Civil Code Section 6150 prior to the filing of any civil action by the Association against Declarant either for alleged damage to the Common Area or for other property within the Residential Property that the Association is obligated to maintain or repair, or alleged damage to any other portion of the Residential Property that arises out of, or is integrally related to, such damage to the Common Area or other property the Association is obligated to maintain or repair. Such notice shall specify all of the matters set forth in California Civil Code Section 6150. All Owners must notify prospective Purchasers of such action or claim and must provide such prospective Purchasers with a copy of the notice received from the Association in accordance with California Civil Code Section 6150.

18.3 **Dispute Resolution.**

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18.3.1 *Generally.* Any Dispute (as defined in the Dispute Resolution Procedures) shall be resolved in accordance with the Dispute Resolution Procedures; *provided, however*, that the Dispute Resolution Procedures shall not apply to any action taken by the Association to enforce a Residential Owner's obligation to pay Assessments, which shall be governed by Article VI of this Declaration.

18.3.2 *Limitation on Expenditures.* The Association shall not incur litigation expenses, including, without limitation, attorneys' fees, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings without the approval of a majority of the Voting Power of the Association, excluding the Voting Power of any Owner who would be a defendant in such proceedings. Such approval shall not be necessary if the legal proceedings are initiated to (i) enforce the use restrictions contained in Article VII hereof, (ii) enforce the architectural control provisions contained in Article IX hereof, or (iii) collect any unpaid Assessments levied pursuant to this Declaration. Prior to initiation of joining as a plaintiff in any legal action, cause of action, proceeding, reference or arbitration against Declarant, such action must be approved by a majority of the Voting Power of the Association, and the Association must provide written notice to all Members prior to initiation of any such legal action, cause of action, proceeding, reference or arbitration against Declarant which notice shall (at a minimum) include (1) a description of the Repair Issue, (2) a description of the attempts of Declarant to correct such Repair Issue and the opportunities provided to Declarant to correct such Repair Issue, (3) a certification from an engineer licensed in the State of California that such Repair Issue exists, along with a description of the scope of work necessary to cure such Repair Issue, (4) the estimated cost to repair such Repair Issue, (5) the name(s) and professional background of the attorney(s) retained by the Association to pursue the claim against Declarant and a description of the relationship between such attorney(s) and any members of the Board (if any), (6) a description of the fee arrangement between such attorney(s) and the Association, (7) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against Declarant and the source of the funds which will be used to pay such fees and expenses, (8) the estimated time necessary to conclude the action against Declarant and (9) an affirmative statement from the Board that the action is in the best interests of the Association and its Members. Failure to provide the notice required herein shall not prejudice any lawsuits filed by the Association. The Association must finance any legal proceeding with monies that are specifically collected for same and may not borrow money or use the reserve funds or other monies collected for specific Association obligations other than legal fees.

## **ARTICLE XIX.**

### **COVENANTS OF COOPERATION**

19.1 **Good Faith and Cooperation.** The Association shall not discriminate against any Residential Owner in performing any of its obligations or in exercising its rights under this Declaration. Because of the lengthy term of this Declaration, it is likely that conditions and circumstances will change significantly during the term of this Declaration. Consequently, the Residential Owners, and the Association shall cooperate in good faith to amend this Declaration with the consent of any First Mortgagees as may be required so as to carry out the intentions of the Residential Owners and the Association as manifested in this Declaration in the event of such changed conditions and circumstances.



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19.2 **Estoppel Certificates.** The Association, at any time and from time to time, upon not less than twenty (20) days' prior written notice from any Residential Owner, shall execute, acknowledge and deliver to the requesting party and to any prospective purchaser, Lessee or First Mortgagee, a certificate of the Association stating: (i) that this Declaration is unmodified and in full force and effect (or, if there have been modifications, that this Declaration is in full force and effect as modified and stating the modifications), (ii) to the best of such party's knowledge, whether or not there are then existing any defenses against the enforcement of any of the obligations of such party under this Declaration (and, if so, specifying same), (iii) to the best of such party's knowledge, whether or not there are then existing any defaults by the Residential Owner in the performance of its obligations under this Declaration (and, if so, specifying same), (iv) the dates, if any, to which Assessments and other charges under this Declaration have been paid by such party and the amounts of the most recently charged Assessments, and (v) any other information that may reasonably be required by any of such persons. It is intended that any such certificate delivered pursuant to this Section 19.2 may be relied upon by the Residential Owner or any prospective purchaser, Lessee or First Mortgagee of any Condominium. The Association may charge a reasonable fee for the delivery of any such estoppel certificate.

19.3 **Reasonable Consents.** Except as otherwise set forth in this Declaration, all consents and approvals of the Members, Residential Owners and any First Mortgagees shall not be unreasonably withheld or delayed.

19.4 **Association Limitation on Liability.** Except to the extent of any available insurance proceeds hereunder, the Association and its agents, employees and consultants shall not be liable to any Residential Owner or any Occupant of any portion of the Residential Property, for any failure of any Utility Facilities or other services which are to be obtained or provided by the Association, or paid for as a Common Expense, or for injury or damage to person or property caused by the elements or by any Residential Owner or Occupant, or any other person, or resulting from electricity, water, ice or other elements which may leak or flow from or over any portion of the Residential Property or from any pipe, drain, conduit, appliance or equipment within the Residential Property. The Association and its agents shall not be liable to any Residential Owner or any Occupant for loss or damage, by theft or otherwise of articles which may be stored within any of the Common Area. No diminution or abatement of any Assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Area, or from any action taken by the Association to comply with any Applicable Laws.

## **ARTICLE XX.**

### **ENFORCEMENT OF CERTAIN BONDED OBLIGATIONS**

20.1 **Consideration by Board.** If (1) the Improvements to be installed by Declarant on the Common Area are not completed prior to the issuance by of a Public Report by the DRE for the sale of Condominiums in the Residential Project, and (2) the Association is obligee under a bond or other arrangement ("**Bond**") required by the DRE to secure performance of the commitment of Declarant to complete such Improvements, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond, with respect to any such Improvement for which a notice of completion has not been filed within sixty (60) days after the completion date specified for that Improvement in the "Planned Construction

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Statement" appended to the Bond. If the Association has given an extension in writing for the completion of any such Improvements, the Board shall be directed to consider and vote on the aforesaid question if a notice of completion has not been filed within thirty (30) days after the expiration of the extension period.

20.2 **Consideration by Members.** A special meeting of Members, for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or on the failure of the Board to consider and vote on the question, shall be held no fewer than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) of the total Voting Power of the Association. A vote of a majority of the Voting Power of the Association residing in Members other than Declarant to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

## **ARTICLE XXI.**

### **GENERAL PROVISIONS**

#### **21.1 Interpretation.**

21.1.1 The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the creation and operation of a mixed-use condominium development and for the maintenance of the Common Area. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. As used herein, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the others, unless the context dictates otherwise.

21.1.2 Nothing herein is intended, nor shall be applied, to create any restrictive covenant or in any way to permit or create any discrimination against any Person based on such Person's race, color, religion, sex, age, sexual orientation, marital status, national origin, ancestry, familial status, source or level of income, or disability in violation of Applicable Laws.

21.2 **Severability.** The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision or provisions of it shall not invalidate any other provisions. In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Declaration shall become illegal, null, void, against public policy, or otherwise unenforceable, for any reason, the remaining portions of this Declaration shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

21.3 **Cumulative Remedies; Waiver.** Each remedy provided for in this Declaration shall be cumulative and not exclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver.

21.4 **Liberal Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose so that the Residential Project will operate as a first class residential project consistent with the Project Quality Standard.

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21.5 **Notification of Sale of Condominium.** Concurrently with the consummation of the sale of any Condominium under circumstances whereby the transferee becomes a Residential Owner, or within five (5) business days thereafter, the transferee shall notify the Association in writing of such sale. Such notification shall set forth the name of the transferee and its Mortgagee and transferor, the unit number or address of the Condominium purchased by the transferee, the transferee's and the Mortgagee's mailing address, and the date of sale. Prior to the receipt of such notification, any and all communications required or permitted to be given by the Association, the Association or the Manager shall be deemed to be duly made and given to the transferee if duly and timely made and given to said transferee's transferor. Mailing addresses may be changed at any time upon written notification to the Association.

21.6 **Notices.** Except as otherwise provided in this Declaration, notice to be given to a Residential Owner shall be in writing and may be delivered personally to the Residential Owner. Personal delivery of such notice to one (1) or more co-Owners of a Condominium or to any general partner of a partnership owning a Condominium shall be deemed delivery to all co-Owners or to the partnership, as the case may be. Personal delivery of such notice to any officer or agent for the service of process on a corporation shall be deemed delivery to the corporation. In lieu of the foregoing, such notice may be delivered by regular United States mail, postage prepaid, addressed to the Residential Owner at the most recent address furnished by such Residential Owner to the Association or, if no such address shall have been furnished, to the street address of such Owner's Unit. Such notice shall be deemed delivered three (3) business days after the time of such mailing, except for notice of a meeting of Members or of the Board in which case the notice provisions of the Bylaws shall control. Notwithstanding the foregoing, if a Residential Owner has elected pursuant to the Bylaws to receive notices from the Association by electronic transmission, then such notice may be delivered by the Association or the Architectural Committee to such Residential Owner by electronic transmission. Any notice to be given to the Association or the Architectural Committee may be delivered personally to any member of the Board or the Architectural Committee, or sent by United States mail, postage prepaid, addressed to the Association or the Architectural Committee at such address as shall be fixed from time to time and circulated to all Owners. Any notice to a Mortgagee or its mortgage servicing contractor may be sent to the address furnished to the Association by such Mortgagee or such contractor for the purposes of notice or, if no such address is furnished, to the address which appears on the Mortgage held by such Mortgagee.

21.7 **Priorities and Inconsistencies.** In the event of any conflict between this Declaration and the Reciprocal Easement Agreement or the Master Declaration, the more restrictive provision shall control. In the event of any conflict between any of the Master Project Documents and the Residential Documents, the more restrictive provision shall control. If there are conflicts or inconsistencies between this Declaration and the Articles or the Bylaws, the terms and provisions of this Declaration shall prevail. Notwithstanding any other provision herein, the Residential Property is and shall remain subject to Applicable Laws and discretionary and ministerial approvals granted by the City. The provisions of this Declaration are not intended, and shall not be applied, to supersede any provisions of Applicable Laws or any approvals granted by the City, except to the extent any such laws or regulations have been waived by the applicable governmental body with jurisdiction to enforce such laws or regulations as part of the issuance thereby of any Project Approvals. Subject to the foregoing, in

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the event of any conflict between the terms of this Declaration and any Applicable Law, the Applicable Law shall control.

21.8 **Warranty.** It is recognized that Declarant, as part of the conveyance of Units to Owners or Common Area to the Association, may include a fit and finish warranty ("**Warranty**") which will apply to the Unit and all Improvements located therein. Notwithstanding anything contained in this Declaration, any and all matters covered by or arising under the Warranty shall be handled in accordance with the provisions and procedures set forth in the Warranty, including, without limitation, any alternative dispute resolution provisions contained therein. Each Owner and the Association shall be required to follow the procedures and requirements set forth in the Warranty. Notwithstanding anything contained in this Declaration, any and all matters covered by or arising under the initial *Agreement of Sale, Deposit Receipt and Joint Escrow Instructions* for a Unit ("**Initial Purchase Agreement**") to the extent arising after the close of escrow on the Unit to which such Initial Purchase Agreement applies, shall be handled in accordance with the provisions and procedures set forth in the Initial Purchase Agreement, including, without limitation, any alternative dispute resolution provisions contained therein. Any and all matters and disputes not arising out of or covered by the Warranty or the Initial Purchase Agreement shall be handled in accordance with the provisions and procedures set forth herein, including, without limitation the Dispute Resolution Procedures. In the event of any conflict between this Declaration and the Warranty, the Warranty shall prevail.

21.9 **Declarant's Right to Cure Repair Issues Relating to Units.** It is Declarant's intent that the Common Area, the Units, and the Improvements be built in compliance with all applicable building codes and ordinances set forth in the edition of the building code applicable at the time the plans for the Improvements were submitted to the applicable governmental authority for approval and that they be of a quality that is consistent with good construction practices for product of this type. Due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect in construction exists and Declarant's responsibility therefor. Declarant has elected not to engage in, follow, nor be bound by, the portions of the "Right to Repair Act" set forth in California Civil Code Sections 910-938. Rather, the alternative non-adversarial procedures set forth in this Section and in the Dispute Resolution Procedures shall apply to and bind all Residential Owners, the Association, and the Board. It is Declarant's intent to resolve all disputes and claims regarding any "Repair Issue" (defined below) in any portion of the Common Area, any Unit, and any Improvement, amicably, and without the necessity of time consuming and costly litigation. Accordingly, the Association, Board and all Residential Owners shall be bound by the following claim resolution procedure:

21.9.1 *Declarant's Right to Cure.* If the Association, Board, or any Residential Owner(s) (collectively, "**Claimant**") claim, contend or allege that any portion of the Common Area, any Unit, and/or any Improvement requires repair or that Declarant or its agents, consultants, contractors or subcontractors (collectively, "**Declarant's Agents**") was responsible for the need to make any such repair (collectively, a "**Repair Issue**"), Declarant is hereby granted the irrevocable right to inspect, repair and/or replace any such Improvement as set forth herein; *provided, however*, nothing herein is intended nor shall be applied to create any obligation on Declarant to inspect, repair or replace any Improvement.

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21.9.2 *Notice to Declarant.* In the event that a Claimant discovers any Repair Issue, Claimant shall, within a reasonable time after discovery, notify Declarant, in writing, at such address at which Declarant maintains its principal place of business, of the specific nature of such Repair Issue and such other matters as required by applicable law ("**Notice of Repair Issue**"). Such notice shall include: (i) a description of the Repair Issue, (ii) the date upon which the Repair Issue was discovered, and (iii) dates and times when the Claimant will be available during ordinary business hours so that service calls or inspections by Declarant can be scheduled.

21.9.3 *Right to Enter, Inspect, Repair, and/or Replace.* Within a reasonable time after the receipt by Declarant of a Notice of Repair Issue or the independent discovery of any Repair Issue by Declarant, Declarant shall have the irrevocable right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Area, any Unit, and/or any Improvement for the purposes of inspecting and, if deemed necessary by Declarant, repairing and/or replacing any Improvement which is the subject of the Repair Issue. In conducting such inspection, repairs and/or replacement Declarant shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances. If Claimant fails to cooperate to arrange a mutually-convenient date and time for inspection, or fails to permit Declarant or its agent access to perform its inspection, the time for performance for Declarant or its agent to complete the inspection and/or to take any further action hereunder shall be extended until Claimant complies, but in no event shall such Claimant's actions toll any applicable statutes of limitations nor shall Claimant have any right to seek any other rights or remedies unless Claimant complies with all the requirements hereof.

21.9.4 *Nature of Repairs.* With respect to any Repair Issue which Declarant elects to repair, such repair shall be completed in conformance with industry standards, subject to applicable laws and regulations, including the time necessary to obtain any applicable building or other permits, and subject to unavoidable delays, including, without limitation, inclement weather, earthquake, flood, other acts of God, war, terrorism, unavailability of parts or materials, labor shortages, strikes, riots, insurrection, or other similar matters. Under no circumstances shall Declarant or any of Declarant's Agents be obligated to improve any Improvements beyond the original standard set forth in applicable building codes in effect at the time of original construction. For example, if a painted interior wall is exhibiting abnormal cracking, the industry standard and customary repair is to properly patch and repaint the wall in its original color. It is not industry standard to remove and replace all existing sheetrock and then repaint the entire room. Each Owner, by acceptance of a deed to a Condominium acknowledges, understands and agrees that no Owner nor the Board nor the Association has any rights to recover any damages or expenses circumstantially or otherwise related to any Repair Issue, including, without limitation, expenses incurred due to inconvenience or unpleasantness relating to the Repair Issue, lost business income as a result of nuisance, delays or disruptions, or any similar costs or expenses. In the event that any Owner or the Association alleges that a repair completed pursuant to the procedures set forth in this Section is not properly completed, or if Declarant fails to follow such procedures, such Owner or the Association shall have the right to institute the Dispute Resolution Procedures.

21.9.5 *Relinquishment of Control.* Notwithstanding any other provision in the Declaration to the contrary (including, without limitation, any provision which expressly or implicitly provides Declarant with control over Association decisions for any period of time),

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Declarant hereby relinquishes control over the Association's ability to decide whether to initiate any claim against Declarant or any of Declarant's Agents with respect to any Repair Issues in any Common Areas. The decision to initiate any such claims for Repair Issues in any Common Areas shall, instead, rest with the majority of the Owners of Units other than Declarant.

21.9.6 *No Additional Obligations.* Nothing set forth in this Section shall be construed to impose any obligation on Declarant to inspect, repair or replace any Improvement or otherwise address any Repair Issue for which Declarant is not otherwise obligated under applicable state and federal law or any limited warranty provided by Declarant in connection with the sale of a Unit. Notwithstanding any other provision of this Declaration, this Section shall not be amended without the prior written approval of Declarant.

21.9.7 *Manufactured Products.* Each Residential Owner, by acceptance of a deed to a Condominium, acknowledges and understands that:

(a) There are certain appliances and other equipment included in or exclusively benefiting the Owner's Unit which are manufactured by third parties (*e.g.*, the dishwasher, heating, ventilation and air conditioning equipment, *etc.*) and other items which are "consumer products" for purposes of the Magnuson-Moss Warranty Act, 15 U.S.C. Sections 2301 *et seq.*, or which are "consumer goods" for purposes of the Song-Beverly Consumer Warranty Act, California Civil Code Sections 1790, *et seq.* ("**Manufactured Products**");

(b) Declarant gives no warranty with respect to such Manufactured Products;

(c) The only warranties for such Manufactured Products are those provided by the manufacturer; and

(d) The Owner shall be responsible for activating specific manufacturer's warranties, including, without limitation, by completing and submitting to the applicable manufacturers any registration cards included with the manufacturer's materials.

21.9.8 *Preventative Maintenance Requirements.* Each Owner, by acceptance of a deed to a Condominium, acknowledges and agrees that such Owner is responsible to properly maintain such Owner's Unit (including all Manufactured Products therein) and the Exclusive Use Common Areas benefiting such Unit in accordance with the requirements of this Declaration. In addition, the Owner shall be obligated to follow and/or implement all applicable maintenance standards in accordance with California Civil Code Section 907. Each Owner, by acceptance of a deed to a Condominium, acknowledges that such maintenance standards may be set forth in a warranty and/or any homeowner's manual, operating instructions, and/or other owner's manual(s) provided by Declarant, the Association, and/or any manufacturer(s) of any Manufactured Product(s).

21.9.9 *Similar Requirements of Civil Code Section 6000.* California Civil Code Section 6000 sets forth a process which must be followed by homeowners' associations prior to filing complaints for damages against persons such as Declarant and Declarant's Agents with respect to design and/or construction of common interest developments. Such process includes requirements to provide various notices and time to respond. To the extent that (i) the provisions

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in this Section and/or in the Dispute Resolution Procedures are enforced by the Association, (ii) the provisions in this Section and/or in the Dispute Resolution Procedures are substantially similar to such provisions in Section 6000 of the California Civil Code, and (iii) an action is subsequently commenced under Section 6000 of the California Civil Code, the Association shall be excused from performing the substantially similar requirements under Section 6000 of the California Civil Code.

21.9.10 *No Effect on Code of Civil Procedure Section 411.35.* California Code of Civil Procedure Section 411.35 requires that before claims for professional negligence may be filed against certain design professionals (e.g., architects, engineers or land surveyors), the claimant's attorney must provide certification that (i) it has reviewed the applicable facts, consulted with experts, and concluded that there is a reasonable and meritorious cause for filing an action, or (ii) the attorney was unable to so consult with such experts (a) despite making at least three (3) good faith attempts, or (b) because of pending expiration of the applicable statute of limitations for filing of the claim. Nothing herein shall be interpreted to eliminate or abrogate the requirement to comply with Section 411.35 of the Code of Civil Procedure or to affect the liability of design professionals, including architects and architectural firms, for matters not covered by California Civil Code Sections 895 *et seq.*

21.10 **Legal Actions.** All legal actions initiated by a Claimant shall be brought in accordance with, and subject to the term of this Article as hereinafter set forth. In the event a Claimant initiates any legal action, cause of action, proceeding, reference or arbitration against Declarant or Declarant's Agents alleging damages (i) for the costs of repairing or the replacement of all or any portion of the Residential Project (including any Repair Issue), (ii) for the diminution in value of any real or personal property resulting from such Repair Issue, or (iii) for any consequential damages resulting from such Repair Issue, any judgment or award in connection therewith shall first be used to correct and or repair such Repair Issue or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Repair Issue. Any excess funds remaining after repair of such Repair Issue shall be paid into the Association's applicable reserve fund.

21.11 **No Representations or Warranties.** No representations or warranties of any kind, express or implied, have been given or made by Declarant, or its agents or employees in connection with the Residential Property, or any portion thereof, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a mixed-use project, except as specifically and expressly set forth in this Declaration and except as may be submitted by Declarant to the DRE from time to time. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

21.12 **Exhibits.** All exhibits referred to in this Declaration are incorporated by reference.

21.13 **Binding Effect.** This Declaration shall inure to the benefit of and be binding on the successors and assigns of Declarant, and the heirs, personal representatives, grantees, tenants,

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successors and assigns of the Residential Owners. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Condominium or other portion of the Residential Property does hereby consent and agree, and shall be conclusively deemed to have consented and agreed, to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in the Residential Property, or any portion thereof.

21.14 **No Merger.** Neither this Declaration nor and portion hereof shall be extinguished by merger through the operation of law alone, but only by a recorded instrument specifically so providing.

21.15 **Statutory References.** All references in this Declaration and the other Residential Documents to various statutes, codes, regulations, ordinances and other laws shall be deemed to include those laws in effect as of the date of this Declaration and the other Residential Documents and any successor laws as may be amended from time to time.




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IN WITNESS WHEREOF, Declarant has executed this instrument as of the date set forth above.

DECLARANT:

Next Century Partners, LLC,  
a Delaware limited liability company

By:   
Name: Rick Arambulo  
Title: Vice President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

COUNTY OF Los Angeles )

ss:

On November 27, 2018 before me, Nicole Stein,  
Notary Public (insert name and title of the officer),

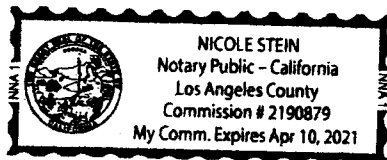
personally appeared Rick Arambulo, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(~~ies~~), and that by his/~~her~~/their signature(~~s~~) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: N Stein

[Seal]



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***Exhibit "A"***

**Percentage Shares**

Unit Number	Percentage Share Per Unit
201	1.053%
202	0.759%
203	1.164%
204	1.054%
205	0.793%
206	1.218%
207	1.232%
208	0.615%
209	1.074%
210	0.938%
1201	2.029%
1202	1.222%
1203	1.539%
1204	1.839%
1205	1.223%
1206	1.225%
1207	1.223%
1208	1.224%
1209	1.220%
1210	1.221%

Unit Number	Percentage Share Per Unit
1211	2.021%
1212	1.908%
1213	1.942%
1214	1.946%
1215	1.943%
1216	1.942%
1217	1.942%
1218	2.151%
1219	2.149%
1220	1.943%
1221	1.900%
1401	2.029%
1402	1.222%
1403	1.539%
1404	1.839%
1405	1.223%
1406	1.225%
1407	1.223%
1408	1.224%
1409	1.220%
1410	1.221%
1411	2.021%
1412	1.908%

Unit Number	Percentage Share Per Unit
1413	1.942%
1414	1.946%
1415	1.943%
1416	1.942%
1417	1.942%
1418	2.151%
1419	2.149%
1420	1.943%
1421	1.900%
1601	3.005%
1602	1.361%
1603	2.373%
1604	1.392%
1605	1.381%
1606	2.496%
1607	1.223%
1608	1.228%
1609	1.516%
1610	1.312%
1611	1.309%